

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

RUSSELL GOLLARD, M.D.,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA ex rel. THE COUNTY OF  
CLARK, AND THE HONORABLE  
ERIC JOHNSON,

Respondent,

and

STEPHANIE V. HIDALGO,

Real Party in Interest.

Supreme Court No. **Electronically Filed**  
District Court No. **Aug 15 2022 04:16 p.m.**  
**Elizabeth A. Brown**  
**Clerk of Supreme Court**

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**APPENDIX OF EXHIBITS TO PETITION FOR WRIT OF MANDAMUS  
REGARDING MOTION TO DISMISS**

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LEWIS BRISBOIS BISGAARD & SMITH LLP

KEITH A. WEAVER

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## **CHRONOLOGICAL INDEX TO APPENDIX**

<b>NUMBER</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>PAGE(S)</b>
1.	Complaint	10/06/2021	001 - 018
2.	Curriculum Vitae of Kevin Daniel Shaw, M.D. (Exhibit 1 to Complaint)	10/06/2021	019 - 026
3.	Expert Affidavit of Kevin Daniel Shaw, M.D. (Exhibit 1 to Complaint)	10/06/2021	027 - 028
4.	Defendant Russell Gollard, M.D.'s Motion to Dismiss	12/29/2021	029 - 039
5.	Plaintiffs' Opposition to Defendant Russell Gollard, M.D.'s Motion to Dismiss	1/06/2022	040 - 070
6.	Reply in Support of Defendant Russell Gollard, M.D.'s Motion to Dismiss	1/26/2022	071 - 083
7.	Minute Order denying Defendant Russell Gollard, M.D.'s Motion to Dismiss	1/31/2022	084 - 085
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**ALPHABETICAL INDEX TO APPENDIX**

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DATED this 15th day of August, 2022

LEWIS BRISBOIS BISGAARD &  
SMITH LLP

By           /s/ Xiao Wen Jin          

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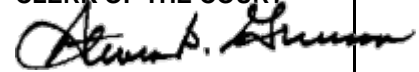
**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of August, 2022, I served the foregoing  
**APPENDIX OF EXHIBITS TO PETITION FOR WRIT OF MANDAMUS**  
**REGARDING MOTION TO DISMISS** upon the following parties by placing a  
true and correct copy thereof in the United States Mail in Las Vegas, Nevada with  
first class postage fully prepaid:

AIMEE CLARK NEWBERRY, ESQ.  
Nevada Bar No. 11084  
CLARK NEWBERRY LAW FIRM  
410 S. Rampart Blvd., Suite #390  
Las Vegas, Nevada 89145  
T: (702) 608-4232  
F: (702) 946-1380  
Email: aclarknewberry@cnlawlv.com  
*Attorneys for Real Parties in Interest*

Judge Eric Johnson  
Department XX  
Eighth Judicial District Court  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89155

By /s/ Tina Sims  
An Employee of  
LEWIS BRISBOIS BISGAARD &  
SMITH LLP



1 **COMP**

2 AIMEE CLARK NEWBERRY, ESQ.  
3 Nevada Bar No. 11084

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10 *Attorney for Plaintiffs*

CASE NO: A-21-842279-C  
Department 20

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 STEPHANIE V. HIDALGO, individually )  
14 and as Special Administrator of the ESTATE )  
15 OF RENE HIDALGO )

16 Plaintiffs, )

17 vs. )

18 RUSSELL GOLLARD, M.D.; DOES I )  
19 through X; and ROE CORPORATIONS I )  
20 through X, inclusive, )

21 Defendants. )  
22 \_\_\_\_\_ )

CASE NO.:

DEPT. NO.:

**COMPLAINT**

*Arbitration Exemption- Medical  
Malpractice*

*Jury Trial Demanded*

23 COMES NOW plaintiffs STEPHANIE V. HIDALGO, individually and as Special  
24 Administrator of the ESTATE OF RENE HIDALGO, by and through their attorney of record,  
25 AIMEE CLARK NEWBERRY, ESQ. of CLARK NEWBERRY LAW FIRM for her causes of  
26 action against the defendants, and each of them, complains and alleges as follows:  
27

28 **PARTIES AND JURISDICTION**

1. Plaintiff STEPHANIE V. HIDALGO at all times relevant to this lawsuit is and  
was a resident of Clark County, Nevada.

2. RENE HIDALGO died wrongfully and prematurely on October 16, 2020, in

1 Clark County, Nevada, and at all times relevant herein, was a resident of Clark County, Nevada.

2  
3 3. At all times relevant herein, prior to the death of RENE HIDALGO, plaintiff  
4 STEPHANIE V. HIDALGO and RENE HIDALGO were a married couple.

5 4. Upon information and belief, defendant RUSSELL GOLLARD, M.D. is, and was  
6 at all times relevant, a physician licensed to practice medicine in the State of Nevada pursuant to  
7 N.R.S. Chapters 449 and 630, and defendant RUSSELL GOLLARD, M.D. is, and was at all  
8 times relevant, practicing medicine in Clark County, Nevada.  
9

10 5. At times relevant DOES I through X, inclusive, were and now are physicians,  
11 surgeons, registered nurses, shift nurses, CNA's, licensed vocational nurses, practical nurses,  
12 registered technicians, aides, attendants, physician's, physician's assistants, therapists or medical  
13 nursing personnel holding themselves out as duly licensed to practice their professions under and  
14 by virtue of the laws of the State of Nevada, and were and/or are now engaged in the practice of  
15 their professions in the State of Nevada; that the true names, identities, or capacities, whether  
16 individual, corporate, associate, or otherwise, of DOES I through X, inclusive, are presently  
17 unknown to the Plaintiffs, who therefore sues said Defendants by such fictitious names; that the  
18 Plaintiffs are informed and believes, and thereupon alleges, that each of the Defendants sued  
19 herein as those are responsible in some manner for the injuries to Plaintiffs as alleged herein; that  
20 some DOE defendants include physicians, nurses, technicians, or other medical providers that  
21 consulted on RENE HIDALGO's care and treatment; that when the true names and capacities of  
22 such Defendants become known, Plaintiffs will ask leave of this Court to amend this Complaint  
23 to insert the true names, identities, and capacities, together with proper charges and allegations.  
24  
25  
26

27 6. At all times relevant, Defendants ROE CORPORATIONS I through X, inclusive,  
28 were and now are corporations, firms, partnerships, associations, other medical entities, other

1 medical providers involved in the care, treatment, diagnosis, surgery, and/or other provision of  
2 medical care to RENE HIDALGO; that the true names, identities, or capacities whether  
3 individual, corporate, associate or otherwise of the ROE CORPORATIONS I through X,  
4 inclusive, are presently unknown to Plaintiff, who therefore sues said Defendants by such  
5 fictitious names; that the Plaintiff is informed and believes and therefore alleges that each of the  
6 Defendants sued herein as ROE CORPORATIONS are responsible in some manner for the  
7 injuries and damages to the Plaintiff alleged herein and are liable based upon respondeat superior  
8 and for the negligent hiring, training and supervision of the physicians, staff, nurses, employees  
9 who were involved in the care and treatment of RENE HIDALGO; that when the true names and  
10 capacities of such Defendants become known, Plaintiffs will ask leave of this Court to amend  
11 this Complaint to insert the true names, identities, and capacities, together with proper charges  
12 and allegations.  
13  
14

15 7. At all times relevant, the Defendants were the agents, ostensible agents, servants,  
16 employees, employers, partners, co-owners/joint ventures, of each other and of their co-  
17 Defendants, and were acting within the course, purpose, and scope of their employment, agency,  
18 ostensible agency, ownership, and/or joint ventures and by reason of such relationships, the  
19 Defendants, and each of them, are vicariously and jointly and severally responsible and liable for  
20 the acts or omissions of the co-Defendants.  
21

22 8. At all times relevant hereto the conduct and activities hereinafter complained of  
23 occurred within Clark County, Nevada.  
24

### 25 **GENERAL ALLEGATIONS**

26  
27 9. Plaintiffs STEPHANIE V. HIDALGO, individually and as Special Administrator  
28 of the ESTATE OF RENE HIDALGO incorporate by reference all of their allegations of

1 paragraphs 1 through 8, above, and the attached affidavit, as though completely set forth herein.

2  
3 10. On September 24, 2020, RENE HIDALGO presented to defendant RUSSELL  
4 GOLLARD, M.D. with a history of squamous cell carcinoma of the scrotum.

5 11. On October 5, 2020, RENE HIDALGO presented to Sunrise Hospital and  
6 Medical Center with a complaint of scrotal pain. He was admitted and on October 6, 2020, Craig  
7 Hunter, M.D. performed a scrotoectomy, scrontoplasty, total penectomy, left orchiectomy,  
8 cystoscopy with left retrograde pyelogram and urethral stent placement.  
9

10 12. On or about October 11, 2020, RENE HIDALGO was discharged home from  
11 Sunrise Hospital and Medical Center. Following his discharge, RENE HIDALGO developed  
12 complaints of severe bilateral lower extremity swelling and pain.  
13

14 13. On October 13, 2020, RENE HIDALGO presented to Southwest Medical  
15 Associates Urgent Care with complaints of bilateral lower extremity swelling and pain. He  
16 reported the swelling had become significant. A limited ultrasound was obtained to rule out DVT  
17 and RENE HIDALGO was told to discuss his concerns at his appointment on October 14, 2020.  
18

19 14. On October 14, 2020, RENE HIDALGO presented to defendant RUSSELL  
20 GOLLARD, M.D. with a complaint of bilateral lower extremity swelling, which had increased in  
21 severity. Plaintiff STEPHANIE V. HIDALGO and RENE HIDALGO communicated their  
22 concerns about the bilateral lower extremity swelling to defendant RUSSELL GOLLARD, M.D.  
23 In response to their concerns, defendant RUSSELL GOLLARD, M.D. only did a cursory  
24 physical examination of RENE HIDALGO's lower extremities. Defendant RUSSELL  
25 GOLLARD, M.D. did not make any additional orders, referrals, recommendations or treatment  
26 plan relative to RENE HIDALGO's bilateral lower extremity swelling.  
27  
28

15. On October 16, 2020, RENE HIDALGO prematurely and wrongfully died of catastrophic pulmonary embolism.

16. Affidavit of Kevin Shaw, M.D., is attached hereto in compliance with NRS 41A.071 and incorporated herein by this reference as though fully set forth herein.

### FIRST CAUSE OF ACTION

**(Medical Negligence/Professional Negligence/Wrongful Death as to All Defendants)**

17. Plaintiffs STEPHANIE V. HIDALGO, individually and as Special Administrator of the ESTATE OF RENE HIDALGO incorporate by reference all of their allegations of paragraphs 1 through 16, above, and the attached affidavit, as though completely set forth herein

18. Defendants are providers of health care as set forth in NRS 41A.017.

19. Defendants owed RENE HIDALGO a duty to use the care and skill ordinarily exercised in similar medical situations, to use reasonable diligence and to use their best judgment in the exercise of skill and the application of learning in an effort to accomplish the purpose for which defendants were employed.

20. At all times mentioned herein, Defendants knew, or in the exercise of reasonable care, should have known, that the provision of medical care and treatment was of such a nature that if not properly given, it is likely to injure the persons to whom it is given.

21. Defendants, and each of them, breached their duties and fell below the standard of care for health care providers who possess the degree of professional learning, skill and ability of other similar health care providers by defendant RUSSELL GOLLARD, M.D. failing to properly examine RENE HIDALGO on October 14, 2020, in failing to properly examine RENE HIDALGO, in failing to make accurate medical records, in failing to note marked asymmetry in

1 the size of RENE HIDALGO's lower extremities, in failing to reach out to and discuss RENE  
2 HIDALGO's complaints and physical presentation with his surgeon, failing to refer RENE  
3 HIDALGO to the emergency department for evaluation of the deep veins in the pelvis and  
4 inferior vena cava, and failing to appreciate and work up the risk of DVT.  
5

6 22. The negligence and carelessness of Defendants in treating and or failing to treat  
7 RENE HIDALGO was the direct and proximate result of the wrongful and untimely death of  
8 RENE HIDALGO.  
9

10 23. Defendants' acts and omissions, including defendant RUSSELL GOLLARD,  
11 M.D. failing to properly examine RENE HIDALGO on October 14, 2020, in failing to properly  
12 examine RENE HIDALGO, in failing to make accurate medical records, in failing to note  
13 marked asymmetry in the size of RENE HIDALGO's lower extremities, in failing to reach out to  
14 and discuss RENE HIDALGO's complaints and physical presentation with his surgeon, failing  
15 to refer RENE HIDALGO to the emergency department for evaluation of the deep veins in the  
16 pelvis and inferior vena cava, and failing to appreciate and work up the risk of DVT, amounted  
17 to a wanton and reckless disregard for the well-being of RENE HIDALGO as to constitute  
18 malice, gross negligence and oppression. As such, plaintiffs are entitled to punitive and  
19 exemplary damages.  
20  
21

22 24. As a direct and proximate result of defendants' actions and or failure to act,  
23 plaintiffs suffered general and special damages, including but not limited to, medical expenses,  
24 funeral expenses, lost financial support, lost household services, RENE HIDALGO's pain and  
25 suffering, STEPHANIE V. HIDALGO's pain and suffering and the loss of the love and  
26 companionship of RENE HIDALGO suffered by STEPHANIE V. HIDALGO, each in an  
27 amount in excess of Fifteen Thousand Dollars (\$15,000).  
28

25. As a further direct and proximate result of defendants' conduct, plaintiffs were compelled to retain the services of an attorney in this matter, and is therefore entitled to reasonable attorney's fees and costs therein.

## PRAYER FOR RELIEF

Wherefore plaintiffs pray for relief from defendants, and each of them, as follows:

1. For general damages in excess of Fifteen Thousand Dollars (\$15,000);
2. For special damages in excess of Fifteen Thousand Dollars (\$15,000);
3. For punitive and exemplary damages in excess of Fifteen Thousand Dollars (\$15,000);
4. For plaintiffs' costs and disbursements of this suit;
5. For reasonable attorney's fees incurred herein; and,
6. For such further relief as this Court may deem just and equitable.

DATED this 6<sup>th</sup> day of October 2021.

CLARK NEWBERRY LAW FIRM

/s/ Aimee Clark Newberry  
AIMEE CLARK NEWBERRY, ESQ.  
Nevada Bar No. 11084  
410 S. Rampart Blvd., #390  
Las Vegas, Nevada 89145  
*Attorney for Plaintiffs*

# EXHIBIT 1

# EXHIBIT 1

Expert Affidavit of Dr. Kevin Shaw

1. I am a physician licensed to practice medicine in the state of California. I am board certified in internal medicine, critical care medicine, and pulmonary diseases.
2. A copy of my current curriculum vitae is attached, which outlines my education, training, qualifications, and experience to provide the opinions contained herein.
3. I have been asked to review the case of Mr. Rene Hidalgo (DOB 4/8/1975) with regard to his care and treatment provided in September and October 2020. Mr. Hidalgo was a 45-year-old gentleman who died on 10/16/2020 from a saddle pulmonary embolism. As evidenced by my curriculum vitae, I am qualified to offer the opinions expressed in this affidavit regarding the care and treatment of Mr. Hidalgo due to my practice as a pulmonary medicine and internal medicine physician. My medical practice is substantially similar to the events encountered by Dr. Gollard in his interaction with Mr. Hidalgo. I diagnose and treat deep venous thromboses and pulmonary emboli on a frequent basis.
4. All opinions expressed in this affidavit are made to a reasonable degree of medical probability.
5. In preparation for this affidavit, I reviewed the autopsy report of Mr. Rene Hidalgo dated 10/19/2020. I reviewed the declaration of his widow, Ms. Stephanie Hidalgo, dated 9/22/2021. I reviewed the emergency department records from North Vista Hospital, where Mr. Hidalgo was taken after his cardiac arrest. I reviewed clinic notes from Optumcare, including visits with Dr. Sabreen Boone and Dr. Russell Gollard. Lastly, I reviewed records from an urgent care visit to Southwest Medical Associates dated 10/13/2020.
6. On 9/24/2020 Mr. Hidalgo was seen by Dr. Russell Gollard, and oncologist with Optumcare Cancer Center due to a recent diagnosis of squamous cell carcinoma of the scrotum. The patient had already seen a urologist, Dr. Craig Hunter, and Dr. Gollard ordered a PET/CT scan for Mr. Hidalgo.
7. On 10/5/2020 the patient presented to Sunrise Hospital and Medical Center with complaints of scrotal pain. He was admitted with a diagnosis of sepsis and received antibiotics and fluid resuscitation.
8. On 10/6/2020 he was taken to the OR by Dr. Craig Hunter where he received scrotoectomy, scrotoplasty, total penectomy, left orchiectomy, cystoscopy with left retrograde pyelogram and ureteral stent placement, and biopsies of inguinal lymph nodes.
9. The patient presented to Southwest Medical Associates urgent care on 10/13/2020 where he was seen by Ian Fero, PA-C complaining of left leg swelling. A left leg duplex ultrasound was performed that evening, and was reported as negative for venous thromboses.
10. He saw his oncologist, Dr. Russell Gollard, the following day. According to the patient's wife, she expressed significant concern regarding his left leg swelling. According to Ms. Hidalgo's statement, her concerns were dismissed and the patient was not adequately examined. She also reports that Dr. Gollard never inquired as to the workup performed the evening prior, including the duplex ultrasound.
11. The patient suffered a cardiac arrest on the morning of 10/16/2020. EMS providers found him in asystole and pulseless electrical activity.
12. Despite aggressive cardiopulmonary resuscitation Mr. Hidalgo died at 8:51 AM.

13. Dr. Russell Gollard breached the standard of care by failing to properly examine Mr. Hidalgo at the time of his clinic visit on 10/14/2020. The patient's widow describes little if any examination of the extremities. The documented physical examination confirms this suspicion, as several physical exam findings recorded by Dr. Gollard were blatantly inaccurate.

14. The standard of care for Dr. Gollard required that he perform a thorough physical examination. Had he done this, he would have noticed marked asymmetry in the size of Mr. Hidalgo's lower extremities.

15. The standard of care with a required a discussion with the patient's surgeon regarding these findings, as well as a referral to the emergency department for venography to evaluate the deep veins of the pelvis and inferior vena cava.

16. Given Dr. Gollard's expertise as an oncologist and hematologist, he should have been aware that Mr. Hidalgo was at increased risk for deep venous thromboses given his diagnosis of cancer and his recent surgery.

17. By failing to practice within the standard of care, these breaches of Dr. Gollard directly lead to the pain, suffering, and death of Mr. Hidalgo who suffered a catastrophic saddle pulmonary embolism.

18. Had the standard of care been upheld by Dr. Gollard, Mr. Hidalgo would have been diagnosed with a deep venous thrombosis and would have been a candidate for life-saving therapeutic anticoagulation.

19. I reserve the right to alter or augment my opinion as more medical records and information are available to me going forward in this case.

I declare under the penalty of perjury under the laws of the State of California in the State of Nevada that the foregoing is true and correct.

Sincerely,



Kevin Shaw, M.D.

## Kevin Daniel Shaw, M.D.

756 Barbara Ave.  
Solana Beach, CA 92075  
(858) 354-6331  
Email: kshawmd@gmail.com

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### Positions:

2019-Present	Medical Director, Scripps Encinitas Respiratory Care
2017-Present	Medical Director, Scripps Encinitas Intensive Care Unit
2017-Present	ECMO Physician Leader, Scripps Healthcare System
2017-Present	Pulmonary/Critical Care, Scripps Healthcare System
2016	Medical Director, Sharp Coronado Intensive Care Unit
2015-2018	Pulmonary/Critical Care, Sharp Healthcare System
2015-2017	Clinical Instructor, UCSD
2010-2015	Associate Clinical Professor of Medicine, UCSD
2010-2015	Associate Director, UCSD Adult Cystic Fibrosis Clinic
2011-2013	Medical Director, UCSD Pulmonary Procedures
2012-2015	Associate Director, UCSD Fellowship Training Program Division of Pulmonary and Critical Care Medicine

### Affiliations:

2017-Present	Scripps Memorial Hospital Encinitas 354 Santa Fe Dr. Encinitas, CA 92024
2016-2017	Sharp Coronado Hospital 250 Prospect Pl Coronado, CA 92118
2015-2018	Sharp Memorial Hospital 7901 Frost St. San Diego, CA 92123
2007-2016	University of California, San Diego - Hillcrest Hospital 200 W. Arbor Drive San Diego, CA 92103
2007-2016	University of California, San Diego - Thornton Hospital 9300 Campus Point Drive San Diego, CA 92037

### Education:

1996-1999	University of California San Diego <i>Bachelor of Science, Molecular Biology</i>
2000-2004	University of California San Diego School of Medicine <i>Doctor of Medicine</i>

**Postdoctoral Training:**

2004-2005	Internship in Internal Medicine University of Utah, Salt Lake City, UT
2005-2007	Residency in Internal Medicine University of Utah, Salt Lake City, UT
2007-2010	Fellowship in Pulmonary and Critical Care Medicine University of California San Diego

**Licensure and Certification:**

2004-Present	Advanced Cardiac Life Support Provider
2005	National Board of Medical Examiners
2005-2008	Utah Physician and Surgeon License Certificate No. 6020023-1205
2005-Present	Drug Enforcement Agency Certificate No. BS9552577
2007-Present	California Physician and Surgeon License Certificate No. A99042
2007-Present	American Board of Internal Medicine Internal Medicine Certification #278055
2010-Present	Fluoroscopy Supervisor and Operator License Certificate No. RHC169555
2010-Present	American Board of Internal Medicine, Pulmonary Disease Certification #278055
2011-Present	American Board of Internal Medicine, Critical Care Medicine Certification #278055

**Professional Memberships:**

2007-Present	Society of Critical Care Medicine
2009-Present	American Thoracic Society
2009-Present	American College of Chest Physicians
2010-Present	California Thoracic Society

**Honors and Awards:**

1996-2000	Provost's Honors Each Quarter University of California San Diego
1997	Golden Key National Honor Society
1999	Phi Beta Kappa
2000	Honors at Graduation, Department of Biology University of California San Diego
2000	Magna Cum Laude University of California San Diego
2005	Outstanding Intern of the Year University of Utah Department of Internal Medicine
2011	Chief Residents' Teaching Award University of California San Diego

2012-2013	San Diego Magazine “Top Doctor” Critical Care Medicine
2012-2014	Kaiser Excellence in Teaching Award Nominee
2013	Scripps Ranch Civic Association Certificate of Appreciation for Community Medical Education
2013	Valedictorian, National Center of Leadership in Academic Medicine (NCLAM)
2015-2017	San Diego Magazine “Top Doctor” Critical Care Medicine
2016	Sharp Healthcare Guardian Angel Award
2018-2021	San Diego Magazine “Top Doctor” Pulmonary/Critical Care Medicine
2021	California Magazine “Top Doctor” Pulmonary Medicine

### **Committee Assignments:**

2009-2010	UCSD PCCM Training Grant Committee
2009-2010	American Thoracic Society Assembly on Allergy, Immunology, and Inflammation
2009-2010	Graduate Medical Education Committee
2009-2012	San Diego Cystic Fibrosis Interest Group
2009-2015	UCSD Critical Care Committee
2010-2012	UCSD PCCM ICU Staffing Committee
2010-2013	Cystic Fibrosis Foundation Therapeutics Development Network, Protocol Review Committee
2010-2015	PCCM Fellowship Education Committee UCSD, Division of Pulmonary and Critical Care Medicine
2010-2015	Faculty Interviewer UCSD Internal Medicine Residency Recruitment
2011	UCSD Representative Forum on Improving Critical Care in California: Potential Role of Tele-ICU Medicine
2012-2013	Cystic Fibrosis Foundation, eQUIP-CR Program UCSD Cystic Fibrosis Research Team Leader
2013-2014	UCSD Central Line-Associated Blood Stream Infections Committee
2014-2015	UCSD Ethics Committee
2014-2015	UCSD CTRI Pilot Grant Reviewer
2014-2015	Cystic Fibrosis Foundation Therapeutics Development Network, Presentations and Publications Committee
2017-Present	Scripps Encinitas Code Blue Committee
2017-Present	Scripps Encinitas Sepsis Committee
2019-Present	Scripps Encinitas Medical Director’s Council

**Educational Service:**

2004-2007	Instructor, Physical Exam Course University of Utah School of Medicine
2007-Present	Instructor, Phlebotomy Course UCSD School of Medicine
2008-2011	Instructor, Introduction to Clinical Medicine UCSD School of Medicine
2009	Organizer and Instructor Pulmonary and Critical Care Fellowship Cadaver Lab
2009	Speaker and Instructor, UCSD Residents' Conference Critical Care Medicine Board Review
2009-2011	Speaker and Instructor, UCSD Residents' Conference Principles of Thoracentesis
2009-2011	Instructor, Objective Structured Clinical Examination UCSD School of Medicine
2009-2015	Speaker and Instructor, UCSD Residents' Conference Ultrasound-Guided Central Line Placement
2010	Speaker and Instructor, UCSD Residents' Conference Introduction to Mechanical Ventilation
2010-2011	Speaker and Instructor, UCSD Residents' Conference Introduction to Bronchiectasis
2010-2011	Speaker and Instructor, UCSD Residents' Conference Cystic Fibrosis Guide to Management
2011-2015	Instructor, Problem Based Learning Small Group UCSD School of Medicine
2011-2015	Faculty Reviewer UCSD Critical Care Nursing Education Conference
2011-2016	Instructor, Pulmonary Systems II Curriculum UCSD School of Medicine
2012	Faculty Discussant, GI Fellows' Conference Gastrointestinal Effects of Cystic Fibrosis
2012	Faculty Consultant UCSD Pharmacy Ground Rounds Presentation
2012-2015	Speaker and Instructor, Medicine R2 Transition Day Ultrasound-Guided Central Line Placement
2012-2015	Speaker and Instructor, PCCM Fellowship Orientation Ultrasound-Guided Central Line Placement
2012-2015	Clinical Director, Pulmonary Systems II Curriculum UCSD School of Medicine
2012-2015	Instructor, Clinical Correlation Conference UCSD School of Medicine
2012-2015	Director, Phlebotomy Course UCSD School of Medicine
2013	Speaker and Instructor UCSD Undergraduate Medical Education Expo
2013-2015	Clinical Director, Pulmonary Systems I Curriculum UCSD School of Medicine
2013-2015	Speaker and Instructor, Medicine Intern Orientation

2013-2015	Ultrasound-Guided Central Line Placement Speaker and Instructor, UCSD Hospitalists Seminar Invasive Procedures for Hospitalists
2014	Speaker and Faculty Reviewer UCSD ICU Case Study Investigation Conference
2015	Speaker and Instructor, Scripps Mercy Residents' Conference; Bronchiectasis
2016	Speaker and Instructor, ICU Updates Conference Sepsis and Septic Shock
2017	Speaker and Instructor, San Diego American Association of Critical Care Nurses; ECMO Implementation

### **Community Service:**

2000-2002	Mentor UCSD Premedical Association of Students for Service
2001	UCSD-Honduras Medical Education Partnership
2001-2002	Medical Student Volunteer UCSD Student-Run Free Clinic
2001-2004	Medical Student Liaison, VIIDAI ( <a href="http://www.viidai.com/">http://www.viidai.com/</a> ) Viajes Interinstitucional de Integración Docente, Asistencial y de Investigación
2009-2018	Medical Director Scripps Ranch Old Pros 4 <sup>th</sup> of July Run & Ride
2010	Speaker and Instructor Southern California Asthma Medical Program
2010	Medical Director, Scripps Ranch Community Association 40 <sup>th</sup> Anniversary Run-Walk Event
2010-Present	Speaker and Instructor St. Augustine High School Water Safety Course
2012-Present	CPR and AED Training to Scripps Ranch Community

### **Research Experience:**

Laboratory Technician, 1997-1999, University of California San Diego.  
Principal Investigator Jeffrey Esko, Ph.D. Assisted with multiple research projects, with responsibilities including screening a cDNA library, cloning, sequencing, plasmid construction, and initiation of a yeast 2-hybrid system to investigate Golgi apparatus protein interactions.

Research Fellow in Pulmonary and Critical Care Medicine, 2008-2010, University of California San Diego. Principal Investigator Paul Quinton, Ph.D. Our project included determination of electrolyte transport properties in the intact lower murine airways. We developed a novel assay which uses perfused *ex-vivo* murine lungs, in an attempt to better replicate *in-vivo* conditions than is possible with cell culture models. Specific topics of investigation included the roles of CFTR and the calcium-activated chloride channel, comparing both wild type and  $\Delta F508$  cystic fibrosis mice.

A Phase 3, International, Multi-Center, Randomized, Double-Blind, Placebo-Controlled, Parallel-Group Efficacy and Safety Study of Denufosol Tetrasodium Inhalation Solution in Patients with Cystic Fibrosis Lung Disease and FEV<sub>1</sub> greater than or equal to 75% but less than or equal to 110% Predicted TIGER-2 (Inspire 08-110) Amendment 1 / Co-PI HRPP #081213 Closed 4/25/11  
Protocol Title: Study 08-114: Open-label Extension of Study 08-110, A Multi-Center Study of Denufosol Tetrasodium Inhalation Solution in Patients with Cystic Fibrosis Lung Disease Amendment: January 20, 2010 (Inspire Tiger 2 Open Label Study) / Co-PI HRPP #101101 Closed 5/5/11

Clofazimine for single patient use. / PI HRPP #101879 Closed 8/12/11

A Phase 3 Efficacy and Safety Study of PTC124 as an Oral Treatment for Nonsense-Mutation-Mediated Cystic Fibrosis PTC-124-GD-009-CF; Protocol Version 2 / Co-PI HRPP #091065 Closed 4/10/12

A Phase 3, Open-Label, Randomized Trial to Evaluate the Safety and Efficacy of MP-376 Inhalation Solution (Aeroquin™) Versus Tobramycin Inhalation Solution (TIS) in Stable Cystic Fibrosis; Study Number: MPEX-209 / PI HRPP #110852

A Phase 3, Multi-Center, Multinational, Randomized, Double-Blind, Placebo-Controlled Study to Evaluate the Efficacy and Safety of MP-376 (Levofloxacin Inhalation Solution; Aeroquin™) in Stable Cystic Fibrosis Patients; Study Number: MPEX 207 / Co-PI HRPP #110431

A Phase 3, Randomized, Double-Blind, Placebo-Controlled, Multicenter Study of Aztreonam for Inhalation Solution (AZLI) in a Continuous Alternating Therapy (CAT) Regimen of Inhaled Antibiotics for the Treatment of Chronic Pulmonary Pseudomonas aeruginosa Infection in Subjects with Cystic Fibrosis; Study Number: GS-US-205-0170 / PI HRPP #121356

A Long-Term Prospective Observational Safety Study of the Incidence of and Risk Factors for Fibrosing Colonopathy in US Patients with Cystic Fibrosis Treated with Pancreatic Enzyme Replacement Therapy: A Harmonized Protocol Across Sponsors; Study Number: CFFC-OB-11 / PI HRPP #121086

A Phase 3, Randomized, Double-Blind, Placebo-Controlled, Parallel-Group Study to Evaluate the Efficacy and Safety of Lumacaftor in Combination with Ivacaftor in Subjects Aged 12 Years and Older With Cystic Fibrosis, Homozygous for the F508del-CFTR Mutation; Study Number: VX12-809-103 / Sub-PI HRPP #130404

A Phase 2, Multicenter, Double-Blind, Placebo-Controlled, Multiple-Dose Study to Evaluate the Safety, Tolerability, Efficacy, Pharmacokinetics, and Pharmacodynamics of Lumacaftor Monotherapy, and Lumacaftor and Ivacaftor Combination Therapy in Subjects With Cystic Fibrosis, Homozygous or Heterozygous for the F508del-CFTR Mutation; Study Number: VX12-809-102 / PI HRPP #131206

A Phase 3, Rollover Study to Evaluate the Safety and Efficacy of Long-term Treatment With Lumacaftor in Combination With Ivacaftor in Subjects Aged 12 Years and Older With Cystic Fibrosis, Homozygous or Heterozygous for the F508del-CFTR Mutation; Study Number: VX12-809-105 / Sub-PI HRPP #131505

### Grant Support:

2009-2010	Cystic Fibrosis Foundation 3 <sup>rd</sup> Year Clinical Fellowship
2010-2013	Cystic Fibrosis Foundation Program for Adult Care Excellence (PACE) Award
2013-2014	UC San Diego Academy of Clinical Scholars Faculty Development Award

### Presentations:

1. American College of Physicians Utah Chapter, Clinical Vignette Competition 2006, Runner-Up. *An Unusual Insulinoma Case.*
2. American Thoracic Society International Conference 2009. *A Novel Assay to Investigate Ion Transport Across Mouse Airway Epithelium.*
3. North American Cystic Fibrosis Conference 2009. *Evidence of  $\Delta F508$  CFTR Activity in the Intact Native Lower Airways of the CF Mouse.*
4. UCSD Summer Critical Care Conference 2010. *Advanced Modes of Ventilation.*
5. California Thoracic Society 2011. *75 y.o. Female with Dry Cough.*
6. Rady Children's Hospital Cystic Fibrosis Family Education Day 2012. *Transition to the Adult Clinic.*
7. Topics & Advances in Pulmonary and Critical Care Medicine 2013. *Ultrasound-Guided Central Line Placement, Hands-on Simulation Session.*
8. Rady Children's Hospital Bioethics Education Program 2013. *A Transition Too Late: Efforts at the End of Life.*
9. American Thoracic Society Resident Boot Camp 2014. *Airway Management 101.*
10. UCSD Heart/Lung Transplant Conference 2014. *Cystic Fibrosis and Lung Transplant.*
11. Rady Children's Hospital Cystic Fibrosis Staff Education Day 2014. *Cystic Fibrosis and Transition.*
12. ICU Updates Course at Sharp Memorial Hospital 2016. *Evaluation and Management of Sepsis and Septic Shock.*
13. R<sup>3</sup> REANIMATE ECMO Conference 2017. *After Cannulation - ECMO Management and Troubleshooting.*
14. American Association of Critical Care Nurses, San Diego Chapter, Fall Conference 2017. *Venovenous ECMO.*

### Publications:

1. Mahmud E, Shaw KD, Penny WF. *Patients at low risk for periprocedural myocardial infarction can be identified by assessment immediately following percutaneous coronary intervention.* J Invasive Cardiol 15:343-7, 2003
2. Shaw KD. *Pulmonary Function Tests in Clinical Decision Support: Hospital Medicine*, edited by Wiese J, Auerbach A, Glasheen J, Li K. Decision Support in Medicine, LLC. Wilmington, DE; 2012.

3. Shaw KD, Johnson MB, Chang W. *Thoracentesis* in Clinical Decision Support: Hospital Medicine, edited by Wiese J, Auerbach A, Glasheen J, Li K. Decision Support in Medicine, LLC. Wilmington, DE; 2012.
4. Shaw KD. *Bronchiectasis* in Manual of Clinical Problems in Pulmonary Medicine, edited by Morris TA, Ries AL, Bordow RA. Lippincott Williams & Wilkins; 2014.
5. Shaw KD, Scholten E, Makani SM. *Thoracentesis* in Clinical Decision Support: Hospital Medicine, edited by Miller C, Burger A, Lai C, Pahwa A. Decision Support in Medicine, LLC. Wilmington, DE; 2016.

## Kevin Daniel Shaw, M.D.

756 Barbara Ave.  
Solana Beach, CA 92075  
(858) 354-6331  
Email: kshawmd@gmail.com

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### Positions:

2019-Present	Medical Director, Scripps Encinitas Respiratory Care
2017-Present	Medical Director, Scripps Encinitas Intensive Care Unit
2017-Present	ECMO Physician Leader, Scripps Healthcare System
2017-Present	Pulmonary/Critical Care, Scripps Healthcare System
2016	Medical Director, Sharp Coronado Intensive Care Unit
2015-2018	Pulmonary/Critical Care, Sharp Healthcare System
2015-2017	Clinical Instructor, UCSD
2010-2015	Associate Clinical Professor of Medicine, UCSD
2010-2015	Associate Director, UCSD Adult Cystic Fibrosis Clinic
2011-2013	Medical Director, UCSD Pulmonary Procedures
2012-2015	Associate Director, UCSD Fellowship Training Program Division of Pulmonary and Critical Care Medicine

### Affiliations:

2017-Present	Scripps Memorial Hospital Encinitas 354 Santa Fe Dr. Encinitas, CA 92024
2016-2017	Sharp Coronado Hospital 250 Prospect Pl Coronado, CA 92118
2015-2018	Sharp Memorial Hospital 7901 Frost St. San Diego, CA 92123
2007-2016	University of California, San Diego - Hillcrest Hospital 200 W. Arbor Drive San Diego, CA 92103
2007-2016	University of California, San Diego - Thornton Hospital 9300 Campus Point Drive San Diego, CA 92037

### Education:

1996-1999	University of California San Diego <i>Bachelor of Science, Molecular Biology</i>
2000-2004	University of California San Diego School of Medicine <i>Doctor of Medicine</i>

**Postdoctoral Training:**

2004-2005	Internship in Internal Medicine University of Utah, Salt Lake City, UT
2005-2007	Residency in Internal Medicine University of Utah, Salt Lake City, UT
2007-2010	Fellowship in Pulmonary and Critical Care Medicine University of California San Diego

**Licensure and Certification:**

2004-Present	Advanced Cardiac Life Support Provider
2005	National Board of Medical Examiners
2005-2008	Utah Physician and Surgeon License Certificate No. 6020023-1205
2005-Present	Drug Enforcement Agency Certificate No. BS9552577
2007-Present	California Physician and Surgeon License Certificate No. A99042
2007-Present	American Board of Internal Medicine Internal Medicine Certification #278055
2010-Present	Fluoroscopy Supervisor and Operator License Certificate No. RHC169555
2010-Present	American Board of Internal Medicine, Pulmonary Disease Certification #278055
2011-Present	American Board of Internal Medicine, Critical Care Medicine Certification #278055

**Professional Memberships:**

2007-Present	Society of Critical Care Medicine
2009-Present	American Thoracic Society
2009-Present	American College of Chest Physicians
2010-Present	California Thoracic Society

**Honors and Awards:**

1996-2000	Provost's Honors Each Quarter University of California San Diego
1997	Golden Key National Honor Society
1999	Phi Beta Kappa
2000	Honors at Graduation, Department of Biology University of California San Diego
2000	Magna Cum Laude University of California San Diego
2005	Outstanding Intern of the Year University of Utah Department of Internal Medicine
2011	Chief Residents' Teaching Award University of California San Diego

2012-2013	San Diego Magazine “Top Doctor” Critical Care Medicine
2012-2014	Kaiser Excellence in Teaching Award Nominee
2013	Scripps Ranch Civic Association Certificate of Appreciation for Community Medical Education
2013	Valedictorian, National Center of Leadership in Academic Medicine (NCLAM)
2015-2017	San Diego Magazine “Top Doctor” Critical Care Medicine
2016	Sharp Healthcare Guardian Angel Award
2018-2021	San Diego Magazine “Top Doctor” Pulmonary/Critical Care Medicine
2021	California Magazine “Top Doctor” Pulmonary Medicine

### **Committee Assignments:**

2009-2010	UCSD PCCM Training Grant Committee
2009-2010	American Thoracic Society Assembly on Allergy, Immunology, and Inflammation
2009-2010	Graduate Medical Education Committee
2009-2012	San Diego Cystic Fibrosis Interest Group
2009-2015	UCSD Critical Care Committee
2010-2012	UCSD PCCM ICU Staffing Committee
2010-2013	Cystic Fibrosis Foundation Therapeutics Development Network, Protocol Review Committee
2010-2015	PCCM Fellowship Education Committee UCSD, Division of Pulmonary and Critical Care Medicine
2010-2015	Faculty Interviewer UCSD Internal Medicine Residency Recruitment
2011	UCSD Representative Forum on Improving Critical Care in California: Potential Role of Tele-ICU Medicine
2012-2013	Cystic Fibrosis Foundation, eQUIP-CR Program UCSD Cystic Fibrosis Research Team Leader
2013-2014	UCSD Central Line-Associated Blood Stream Infections Committee
2014-2015	UCSD Ethics Committee
2014-2015	UCSD CTRI Pilot Grant Reviewer
2014-2015	Cystic Fibrosis Foundation Therapeutics Development Network, Presentations and Publications Committee
2017-Present	Scripps Encinitas Code Blue Committee
2017-Present	Scripps Encinitas Sepsis Committee
2019-Present	Scripps Encinitas Medical Director’s Council

**Educational Service:**

2004-2007	Instructor, Physical Exam Course University of Utah School of Medicine
2007-Present	Instructor, Phlebotomy Course UCSD School of Medicine
2008-2011	Instructor, Introduction to Clinical Medicine UCSD School of Medicine
2009	Organizer and Instructor Pulmonary and Critical Care Fellowship Cadaver Lab
2009	Speaker and Instructor, UCSD Residents' Conference Critical Care Medicine Board Review
2009-2011	Speaker and Instructor, UCSD Residents' Conference Principles of Thoracentesis
2009-2011	Instructor, Objective Structured Clinical Examination UCSD School of Medicine
2009-2015	Speaker and Instructor, UCSD Residents' Conference Ultrasound-Guided Central Line Placement
2010	Speaker and Instructor, UCSD Residents' Conference Introduction to Mechanical Ventilation
2010-2011	Speaker and Instructor, UCSD Residents' Conference Introduction to Bronchiectasis
2010-2011	Speaker and Instructor, UCSD Residents' Conference Cystic Fibrosis Guide to Management
2011-2015	Instructor, Problem Based Learning Small Group UCSD School of Medicine
2011-2015	Faculty Reviewer UCSD Critical Care Nursing Education Conference
2011-2016	Instructor, Pulmonary Systems II Curriculum UCSD School of Medicine
2012	Faculty Discussant, GI Fellows' Conference Gastrointestinal Effects of Cystic Fibrosis
2012	Faculty Consultant UCSD Pharmacy Ground Rounds Presentation
2012-2015	Speaker and Instructor, Medicine R2 Transition Day Ultrasound-Guided Central Line Placement
2012-2015	Speaker and Instructor, PCCM Fellowship Orientation Ultrasound-Guided Central Line Placement
2012-2015	Clinical Director, Pulmonary Systems II Curriculum UCSD School of Medicine
2012-2015	Instructor, Clinical Correlation Conference UCSD School of Medicine
2012-2015	Director, Phlebotomy Course UCSD School of Medicine
2013	Speaker and Instructor UCSD Undergraduate Medical Education Expo
2013-2015	Clinical Director, Pulmonary Systems I Curriculum UCSD School of Medicine
2013-2015	Speaker and Instructor, Medicine Intern Orientation

2013-2015	Ultrasound-Guided Central Line Placement Speaker and Instructor, UCSD Hospitalists Seminar Invasive Procedures for Hospitalists
2014	Speaker and Faculty Reviewer UCSD ICU Case Study Investigation Conference
2015	Speaker and Instructor, Scripps Mercy Residents' Conference; Bronchiectasis
2016	Speaker and Instructor, ICU Updates Conference Sepsis and Septic Shock
2017	Speaker and Instructor, San Diego American Association of Critical Care Nurses; ECMO Implementation

### **Community Service:**

2000-2002	Mentor UCSD Premedical Association of Students for Service
2001	UCSD-Honduras Medical Education Partnership
2001-2002	Medical Student Volunteer UCSD Student-Run Free Clinic
2001-2004	Medical Student Liaison, VIIDAI ( <a href="http://www.viidai.com/">http://www.viidai.com/</a> ) Viajes Interinstitucional de Integración Docente, Asistencial y de Investigación
2009-2018	Medical Director Scripps Ranch Old Pros 4 <sup>th</sup> of July Run & Ride
2010	Speaker and Instructor Southern California Asthma Medical Program
2010	Medical Director, Scripps Ranch Community Association 40 <sup>th</sup> Anniversary Run-Walk Event
2010-Present	Speaker and Instructor St. Augustine High School Water Safety Course
2012-Present	CPR and AED Training to Scripps Ranch Community

### **Research Experience:**

Laboratory Technician, 1997-1999, University of California San Diego.  
Principal Investigator Jeffrey Esko, Ph.D. Assisted with multiple research projects, with responsibilities including screening a cDNA library, cloning, sequencing, plasmid construction, and initiation of a yeast 2-hybrid system to investigate Golgi apparatus protein interactions.

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Clofazimine for single patient use. / PI HRPP #101879 Closed 8/12/11

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A Phase 3, Open-Label, Randomized Trial to Evaluate the Safety and Efficacy of MP-376 Inhalation Solution (Aeroquin™) Versus Tobramycin Inhalation Solution (TIS) in Stable Cystic Fibrosis; Study Number: MPEX-209 / PI HRPP #110852

A Phase 3, Multi-Center, Multinational, Randomized, Double-Blind, Placebo-Controlled Study to Evaluate the Efficacy and Safety of MP-376 (Levofloxacin Inhalation Solution; Aeroquin™) in Stable Cystic Fibrosis Patients; Study Number: MPEX 207 / Co-PI HRPP #110431

A Phase 3, Randomized, Double-Blind, Placebo-Controlled, Multicenter Study of Aztreonam for Inhalation Solution (AZLI) in a Continuous Alternating Therapy (CAT) Regimen of Inhaled Antibiotics for the Treatment of Chronic Pulmonary Pseudomonas aeruginosa Infection in Subjects with Cystic Fibrosis; Study Number: GS-US-205-0170 / PI HRPP #121356

A Long-Term Prospective Observational Safety Study of the Incidence of and Risk Factors for Fibrosing Colonopathy in US Patients with Cystic Fibrosis Treated with Pancreatic Enzyme Replacement Therapy: A Harmonized Protocol Across Sponsors; Study Number: CFFC-OB-11 / PI HRPP #121086

A Phase 3, Randomized, Double-Blind, Placebo-Controlled, Parallel-Group Study to Evaluate the Efficacy and Safety of Lumacaftor in Combination with Ivacaftor in Subjects Aged 12 Years and Older With Cystic Fibrosis, Homozygous for the F508del-CFTR Mutation; Study Number: VX12-809-103 / Sub-PI HRPP #130404

A Phase 2, Multicenter, Double-Blind, Placebo-Controlled, Multiple-Dose Study to Evaluate the Safety, Tolerability, Efficacy, Pharmacokinetics, and Pharmacodynamics of Lumacaftor Monotherapy, and Lumacaftor and Ivacaftor Combination Therapy in Subjects With Cystic Fibrosis, Homozygous or Heterozygous for the F508del-CFTR Mutation; Study Number: VX12-809-102 / PI HRPP #131206

A Phase 3, Rollover Study to Evaluate the Safety and Efficacy of Long-term Treatment With Lumacaftor in Combination With Ivacaftor in Subjects Aged 12 Years and Older With Cystic Fibrosis, Homozygous or Heterozygous for the F508del-CFTR Mutation; Study Number: VX12-809-105 / Sub-PI HRPP #131505

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5. California Thoracic Society 2011. *75 y.o. Female with Dry Cough.*
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9. American Thoracic Society Resident Boot Camp 2014. *Airway Management 101.*
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12. ICU Updates Course at Sharp Memorial Hospital 2016. *Evaluation and Management of Sepsis and Septic Shock.*
13. R<sup>3</sup> REANIMATE ECMO Conference 2017. *After Cannulation - ECMO Management and Troubleshooting.*
14. American Association of Critical Care Nurses, San Diego Chapter, Fall Conference 2017. *Venovenous ECMO.*

#### **Publications:**

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2. Shaw KD. *Pulmonary Function Tests in Clinical Decision Support: Hospital Medicine*, edited by Wiese J, Auerbach A, Glasheen J, Li K. Decision Support in Medicine, LLC. Wilmington, DE; 2012.

3. Shaw KD, Johnson MB, Chang W. *Thoracentesis* in Clinical Decision Support: Hospital Medicine, edited by Wiese J, Auerbach A, Glasheen J, Li K. Decision Support in Medicine, LLC. Wilmington, DE; 2012.
4. Shaw KD. *Bronchiectasis* in Manual of Clinical Problems in Pulmonary Medicine, edited by Morris TA, Ries AL, Bordow RA. Lippincott Williams & Wilkins; 2014.
5. Shaw KD, Scholten E, Makani SM. *Thoracentesis* in Clinical Decision Support: Hospital Medicine, edited by Miller C, Burger A, Lai C, Pahwa A. Decision Support in Medicine, LLC. Wilmington, DE; 2016.

Expert Affidavit of Dr. Kevin Shaw

1. I am a physician licensed to practice medicine in the state of California. I am board certified in internal medicine, critical care medicine, and pulmonary diseases.
2. A copy of my current curriculum vitae is attached, which outlines my education, training, qualifications, and experience to provide the opinions contained herein.
3. I have been asked to review the case of Mr. Rene Hidalgo (DOB 4/8/1975) with regard to his care and treatment provided in September and October 2020. Mr. Hidalgo was a 45-year-old gentleman who died on 10/16/2020 from a saddle pulmonary embolism. As evidenced by my curriculum vitae, I am qualified to offer the opinions expressed in this affidavit regarding the care and treatment of Mr. Hidalgo due to my practice as a pulmonary medicine and internal medicine physician. My medical practice is substantially similar to the events encountered by Dr. Gollard in his interaction with Mr. Hidalgo. I diagnose and treat deep venous thromboses and pulmonary emboli on a frequent basis.
4. All opinions expressed in this affidavit are made to a reasonable degree of medical probability.
5. In preparation for this affidavit, I reviewed the autopsy report of Mr. Rene Hidalgo dated 10/19/2020. I reviewed the declaration of his widow, Ms. Stephanie Hidalgo, dated 9/22/2021. I reviewed the emergency department records from North Vista Hospital, where Mr. Hidalgo was taken after his cardiac arrest. I reviewed clinic notes from Optumcare, including visits with Dr. Sabreen Boone and Dr. Russell Gollard. Lastly, I reviewed records from an urgent care visit to Southwest Medical Associates dated 10/13/2020.
6. On 9/24/2020 Mr. Hidalgo was seen by Dr. Russell Gollard, and oncologist with Optumcare Cancer Center due to a recent diagnosis of squamous cell carcinoma of the scrotum. The patient had already seen a urologist, Dr. Craig Hunter, and Dr. Gollard ordered a PET/CT scan for Mr. Hidalgo.
7. On 10/5/2020 the patient presented to Sunrise Hospital and Medical Center with complaints of scrotal pain. He was admitted with a diagnosis of sepsis and received antibiotics and fluid resuscitation.
8. On 10/6/2020 he was taken to the OR by Dr. Craig Hunter where he received scrotoectomy, scrotoplasty, total penectomy, left orchiectomy, cystoscopy with left retrograde pyelogram and ureteral stent placement, and biopsies of inguinal lymph nodes.
9. The patient presented to Southwest Medical Associates urgent care on 10/13/2020 where he was seen by Ian Fero, PA-C complaining of left leg swelling. A left leg duplex ultrasound was performed that evening, and was reported as negative for venous thromboses.
10. He saw his oncologist, Dr. Russell Gollard, the following day. According to the patient's wife, she expressed significant concern regarding his left leg swelling. According to Ms. Hidalgo's statement, her concerns were dismissed and the patient was not adequately examined. She also reports that Dr. Gollard never inquired as to the workup performed the evening prior, including the duplex ultrasound.
11. The patient suffered a cardiac arrest on the morning of 10/16/2020. EMS providers found him in asystole and pulseless electrical activity.
12. Despite aggressive cardiopulmonary resuscitation Mr. Hidalgo died at 8:51 AM.

13. Dr. Russell Gollard breached the standard of care by failing to properly examine Mr. Hidalgo at the time of his clinic visit on 10/14/2020. The patient's widow describes little if any examination of the extremities. The documented physical examination confirms this suspicion, as several physical exam findings recorded by Dr. Gollard were blatantly inaccurate.

14. The standard of care for Dr. Gollard required that he perform a thorough physical examination. Had he done this, he would have noticed marked asymmetry in the size of Mr. Hidalgo's lower extremities.

15. The standard of care with a required a discussion with the patient's surgeon regarding these findings, as well as a referral to the emergency department for venography to evaluate the deep veins of the pelvis and inferior vena cava.

16. Given Dr. Gollard's expertise as an oncologist and hematologist, he should have been aware that Mr. Hidalgo was at increased risk for deep venous thromboses given his diagnosis of cancer and his recent surgery.

17. By failing to practice within the standard of care, these breaches of Dr. Gollard directly lead to the pain, suffering, and death of Mr. Hidalgo who suffered a catastrophic saddle pulmonary embolism.

18. Had the standard of care been upheld by Dr. Gollard, Mr. Hidalgo would have been diagnosed with a deep venous thrombosis and would have been a candidate for life-saving therapeutic anticoagulation.

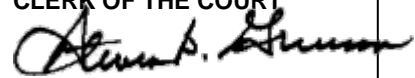
19. I reserve the right to alter or augment my opinion as more medical records and information are available to me going forward in this case.

I declare under the penalty of perjury under the laws of the State of California in the State of Nevada that the foregoing is true and correct.

Sincerely,



Kevin Shaw, M.D.



1 KEITH A. WEAVER  
Nevada Bar No. 10271  
2 E-Mail: Keith.Weaver@lewisbrisbois.com  
XIAO WEN JIN  
3 Nevada Bar No. 13901  
XiaoWen.Jin@lewisbrisbois.com  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
5 6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
6 702.893.3383  
FAX: 702.893.3789  
7 *Attorneys for Defendant Russell Gollard,*  
8 *M.D.*

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 STEPHANIE V. HIDALGO, individually  
and as Special Administrator of the  
12 ESTATE OF RENE HIDALGO,

13 Plaintiffs,

14 vs.

15 RUSSELL GOLLARD, M.D.; DOES I  
16 through X; and ROE CORPORATIONS I  
17 through X, inclusive,

18 Defendants.

Case No. A-21-842279-C

Dept. No.: 20

**DEFENDANT RUSSELL GOLLARD,  
M.D.'S MOTION TO DISMISS**

**HEARING REQUESTED**

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1 Defendant Russell Gollard, M.D. ("Defendant" or "Dr. Gollard"), by and through his  
2 attorneys, LEWIS BRISBOIS BISGAARD & SMITH LLP, hereby submits his Motion to  
3 Dismiss pursuant to NRCP 12(b)(5) and NRS 41A.071.

4 This Motion is based upon the papers and pleadings on file herein, the attached  
5 Memorandum of Points and Authorities and any such oral argument that may be heard at  
6 the hearing on this matter.

7 DATED this 29th day of December, 2021

8  
9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10  
11 By /s/ Xiao Wen Jin  
12 KEITH A. WEAVER  
13 Nevada Bar No. 10271  
14 XIAO WEN JIN  
15 Nevada Bar No. 13901  
16 6385 S. Rainbow Boulevard, Suite 600  
17 Las Vegas, Nevada 89118  
18 *Attorneys for Defendant Russell Gollard, M.D.*  
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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION AND STATEMENT OF FACTS**

3 This is a case for professional negligence/wrongful death arising out of Decedent  
4 Rene Hidalgo's follow-up visit with his oncologist, Russell Gollard, M.D., on October 14,  
5 2020 after surgery for tumor removal. Plaintiff Stephanie Hidalgo alleges that during that  
6 visit, Decedent complained of lower leg swelling and pain, and that Dr. Gollard failed to  
7 properly examine Decedent's complaints and refer him to the emergency department for  
8 further evaluation. Plaintiff further claims that these alleged failures caused Decedent to  
9 die from a catastrophic pulmonary embolism on October 16, 2020. Plaintiff's Complaint  
10 asserts a claim for medical negligence/professional negligence/wrongful death and seeks  
11 punitive damages.

12 Dr. Gollard now moves to dismiss Plaintiff's Complaint and prayer for punitive  
13 damages based on the following contentions:

- 14 1. Plaintiff's expert affidavit is defective under NRS 41A.071(2) because the expert has  
15 not and does not practice in an area that is "substantially similar" to that of Dr.  
16 Gollard; and  
17 2. Plaintiff's prayer for punitive damages should be denied because there is no basis  
18 to support punitive damages, and Plaintiff should not be allowed to circumvent the  
19 \$350,000 non-economic damages cap under NRS 41A.035.

20 **II. LEGAL ARGUMENT**

21 **A. Legal Standard**

22 Nevada Rule of Civil Procedure 12(b)(5) provides for dismissal of a cause of action  
23 for the "failure to state a claim upon which relief can be granted." A motion to dismiss tests  
24 the legal sufficiency of the claim set out against the moving party. *See Zalk-Josephs Co. v.*  
25 *Wells Cargo, Inc.*, 81 Nev. 163, 400 P.2d 621 (1965). Dismissal is appropriate where a  
26 plaintiff's allegations "are insufficient to establish the elements of a claim for relief." *Hampe*  
27 *v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002), overruled in part on other grounds  
28 by *Buzz Stew, LLC v. City of N Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

1 To survive dismissal under NRCP 12(b)(5), a complaint must contain "facts, which if true,  
2 would entitle the plaintiff to relief." *Buzz Stew, LLC v. City of N Las Vegas*, 124 Nev. 224,  
3 228, 181 P.3d 670, 672 (2008). Hence, in analyzing the validity of a claim the court is to  
4 accept plaintiff's factual allegations "as true and draw all inferences in the Plaintiff's favor."  
5 *Id.*

6 To plead a claim for relief, a party must include (1) a statement of the claim, and (2)  
7 a demand for relief. NRCP 8(a). With respect to the first requirement, the "complaint must  
8 set forth sufficient facts to establish all necessary elements of a claim for relief ... so that  
9 the adverse party has adequate notice of the nature of the claim and relief sought." *Hay v.*  
10 *Hay*, 100 Nev. 196, 198 (1984); *See Liston v. Las Vegas Metro. Police Dep't*, 111 Nev.  
11 1575, (1995). A complaint may be dismissed for failure to state a claim upon which relief  
12 can be granted. NRCP 12(b)(5).

13 **B. Plaintiff Does Not Satisfy NRS 41A.071 As Her Expert Does Not Practice Or**  
14 **Has Practiced In An Area Substantially Similar To Oncology.**

15 NRS 41A.071, as amended, provides as follows:

16 If an action for professional negligence is filed in the district court, the  
17 district court **shall dismiss** the action, without prejudice, if the action is  
filed without an affidavit that:

- 18 1. Supports the allegations contained in the action;
- 19 2. Is submitted by a **medical expert who practices or has practiced in an**  
20 **area that is substantially similar to the type of practice engaged in at the**  
21 **time of the alleged professional negligence;**
- 22 3. Identifies by name, or describes by conduct, each provider of health  
care who is alleged to be negligent; and
- 23 4. Sets forth factually a specific act or acts of alleged negligence  
separately as to each defendant in simple, concise and direct terms.

24 NRS 41A.071 (emphasis added).

25 In Nevada, a complaint for professional negligence must be filed with an expert  
26 affidavit that supports the allegations of the complaint. NRS 41A.071. A party's failure  
27 to submit the affidavit requires dismissal without prejudice. *Id.* The purpose of the  
28 statute is to lower costs, reduce frivolous lawsuits, and ensure that medical malpractice  
actions are filed in good faith based upon competent expert medical opinion. *See Fierle*

1 *v. Perez*, 125 Nev. 728, 219 P.3d 906, 908 (Nev. 2009). The threshold question of  
2 admissibility is governed by the scope of the witness' knowledge and not the artificial  
3 classification of the witness by title. *Borger v. Eighth Judicial Dist. Court*, 120 Nev. 1021,  
4 1027-28, 102 P.3d 600, 605 (2004). The Legislature's regulation of Nevada's health care  
5 system through the medical expert affidavit requirement in Nev. Rev. Stat. § 41A.071 is  
6 rationally related to the legitimate governmental interest of managing what was considered  
7 a medical malpractice insurance crisis in Nevada. *Peck v. Zipf*, 407 P.3d 775, 777 (Nev.  
8 2017).

9 Here, Plaintiff's claim require compliance with NRS 41A.07 as the allegations  
10 involve issues surrounding the medical diagnosis, treatment or judgment of Dr. Gollard.  
11 However, Plaintiff's expert affidavit by Kevin Shaw, M.D. is insufficient as he does not  
12 have the expertise to opine on the standard of care of an oncologist. Dr. Shaw's board-  
13 certifications are in internal medicine, critical care medicine, and pulmonary diseases.<sup>1</sup>  
14 A review of his curriculum vitae shows that he has no experience or training related to  
15 oncology.<sup>2</sup> His work experience focuses primarily on pulmonology and critical care.<sup>3</sup>

16 Dr. Shaw has no experience working as an oncologist, yet his criticisms of Dr.  
17 Gollard are exclusively on Dr. Gollard's standard of care as an oncologist. In his affidavit,  
18 Dr. Shaw made multiple standard of care criticisms against Dr. Gollard which he is not  
19 qualified to make. Dr. Shaw opined that Dr. Gollard breached the standard of care as an  
20 oncologist by failing to properly examine Decedent at the time of his clinic visit on October  
21 14, 2020; failing to conduct a discussion with Decedent's surgeon regarding his findings;  
22 and failing to refer to Decedent to the emergency department for venography to evaluate  
23 the deep veins of the pelvis and inferior vena cava.

24 ///

26 <sup>1</sup> See Dr. Shaw's Affidavit and Curriculum Vitae, attached to Plaintiff's Complaint, on file herein.

27 <sup>2</sup> *Id.*

28 <sup>3</sup> *Id.*

1 Dr. Shaw, however, is not board-certified in oncology. Nor did he attest in his  
2 affidavit that he is familiar with the standard of care applicable to oncologists. Dr. Shaw  
3 may be qualified to opine on whether a pulmonary embolism caused Decedent's death,  
4 but he is not qualified to opine on whether an oncologist complied with the standard of  
5 care at a follow-up visit post tumor removal. In other words, what a reasonable  
6 oncologist should or should not have done under similar circumstances is not within Dr.  
7 Shaw's scope of knowledge.

8 In sum, Plaintiff was required to attach an affidavit of a physician practicing in the  
9 same or a substantially similar area of medicine as Dr. Gollard. Dr. Shaw is not qualified  
10 to offer standard of care opinions regarding Dr. Gollard. Allowing Plaintiff's Complaint to  
11 go forward would defeat and run afoul to the purpose and goal of NRS 41A.071 which is to  
12 ensure medical malpractice actions are filed in good faith based upon competent expert  
13 medical opinion. Accordingly, as Plaintiff failed to attach an affidavit from a physician  
14 working in the same or substantially similar field as Dr. Gollard, her Complaint must be  
15 dismissed.

16 **C. Plaintiff Cannot Amend a Complaint that Does Not Comply with NRS**  
17 **41A.071.**

18 Where a complaint is dismissed for noncompliance with NRS 41A.071, the  
19 complaint is void *ab initio*. *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev  
20 1298, 1302, 148 P.3d 790, 793 (2006). In effect, such a complaint is dismissed by  
21 operation of law when it is filed without a compliant expert affidavit. *Id.* Thus, leave to  
22 amend the complaint cannot be afforded as there is no complaint to be amended. *Id.* at  
23 1300 ("Because a void complaint does not legally exist, it cannot be amended.").

24 In *Washoe Med. Ctr.*, the plaintiff filed a medical malpractice action. *Id.* The  
25 plaintiff's complaint was filed one day before the statute of limitations ran. However,  
26 the plaintiff failed to attach a supporting expert affidavit as required by NRS 41A.071.  
27 and the defendant filed a motion to dismiss the complaint. After the defendant's motion  
28 to dismiss was filed, but before the district court rendered a decision thereon, the

1 plaintiff filed an amended complaint, which included an expert affidavit. The defendant  
2 moved to strike the plaintiff's amended complaint, arguing that NRS 41A.071 did not  
3 permit amendment. The district court denied the defendant's motions and permitted the  
4 plaintiff to amend the complaint pursuant to NRCP 15(a), which allows a plaintiff to  
5 amend a pleading once as a matter of course before a responsive pleading is served.  
6 Subsequently, the defendant filed a petition for a writ of mandamus challenging the  
7 district court's ruling.

8 The Nevada Supreme Court granted the defendant's petition and stated as  
9 follows:

10 We conclude that, under NRS 41A.071, a complaint filed without a  
11 supporting medical expert affidavit is void ab initio and must be  
12 dismissed. Because a void complaint does not legally exist, it cannot be  
amended. Therefore, NRCP 15(a) does not apply in this instance, and  
an NRS 41A.071 defect cannot be cured through amendment.

13 *Id.* at 1300-01.

14 In support of its ruling, the Supreme Court noted that "[t]he Legislature's choice of  
15 the words 'shall dismiss' instead of 'subject to dismissal' indicates that the Legislature  
16 intended that the court have no discretion with respect to dismissal and that a complaint  
17 filed without an expert affidavit would be void and must be automatically dismissed." *Id.* at  
18 1303. The Supreme Court further discussed the legislative history of NRS 41A.071 to  
19 support the conclusion that a complaint defective under NRS 41A.071 is void and cannot  
20 be amended:

21 NRS 41A.071 was adopted as part of the 2002 medical malpractice tort  
22 reform that abolished the Medical-Legal Screening Panel. NRS 41A.071's  
23 purpose is to lower costs, reduce frivolous lawsuits, and ensure that  
24 medical malpractice actions are filed in good faith based upon competent  
25 expert medical opinion. According to NRS 41A.071's legislative history,  
the requirement that a complaint be filed with a medical expert affidavit  
was designed to streamline and expedite medical malpractice cases and  
lower overall costs, and the Legislature was concerned with strengthening  
the requirements for expert witnesses.

26 When discussing the expert witness requirement, it was noted that  
27 under the former Medical-Legal Screening Panel rules, a medical  
28 expert's affidavit was required. The new legislation therefore required  
that, at the district court level, a medical expert's affidavit was  
necessary for the district court to confirm that the case was meritorious.

1 The Nevada Trial Lawyers Association "believed there needed to be a  
2 deterrent from cases being filed in order to get a quick settlement," and  
3 that the affidavit requirement would protect against this by ensuring that  
4 medical records would be reviewed by an expert *before the case was*  
5 *filed*

6 *Id.* at 1304.

7 Accordingly, the Supreme Court concluded that a complaint that fails to comport with  
8 the affidavit-of-merit requirement of NRS 41A.071 is void *ab initio* and has no force and  
9 effect. "Because a complaint that does not comply with NRS 41A.071 is void *ab initio*, it  
10 does not legally exist and thus it cannot be amended." *Id.*

11 The Supreme Court of Nevada has regularly held that failure to comply with the  
12 affidavit requirement mandates dismissal without leave to amend. *See Borger v. District*  
13 *Court*, 120 Nev. 1021, 1029 (2004); *See also, Szydel v. Markman*, 121 Nev. 453, 458  
14 (2005); and *Washoe Medical Center. v. Second Judicial District Court, supra*. Accordingly,  
15 Plaintiff's Complaint should be dismissed without leave to amend.

16 **D. Plaintiff's Prayer For Punitive Damages Should Be Denied Because There Is  
17 No Basis To Support Punitive Damages, And Plaintiff Should Not Be Allowed  
18 To Circumvent The \$350,000 Non-Economic Damages Cap Under NRS  
19 41A.035.**

20 Nevada law provides that punitive damages may only be awarded in circumstances  
21 "where it is proven by clear and convincing evidence that the defendant has been guilty of  
22 oppression, fraud or malice, express or implied." NRS 42.005(1). NRS 42.001(2) defines  
23 "fraud" as "an intentional misrepresentation, deception or concealment of a material fact  
24 known to the person with the intent to deprive another person of his or her rights or property  
25 or to otherwise injure another person (emphasis added)." Malice is "conduct which is  
26 intended to injure a person or despicable conduct which is engaged in with a conscious  
27 disregard of the rights or safety of others." NRS 42.001(3); *Countrywide Home Loans, Inc.*  
28 *v. Thitchener*, 124 Nev. 725, 739, 192 P.3d 243,252 (2008). Malice is more than just  
negligence; at a minimum, it "must exceed mere recklessness or gross negligence  
(emphasis added)." *Id.* Oppression is defined as "despicable conduct that subjects a  
person to cruel and unjust hardship with conscious disregard of the rights of the person

1 (emphasis added)." *Id.* Conscious disregard is defined as "the knowledge of the probable  
2 harmful consequences of a wrongful act and a **willful and deliberate failure** to act to avoid  
3 those consequences (emphasis added)." *Id.* Merely alleging negligence is not sufficient to  
4 implicate punitive damages. *See Maduike v. Agency Rent-A-Car*, 114 Nev. 1, 3, 953 P.2d  
5 24, 25 (1998) (holding that conduct ruled to be an indignity, unkind, and inconsiderate did  
6 not rise to the level of being atrocious, intolerable, or outside all bounds of decency, as  
7 required for imposing punitive damages). "[E]ven unconscionable irresponsibility will not  
8 support a punitive damages award." *Id.* at 26.

9         Here, Plaintiff asserts, in a conclusory manner, that Dr. Gollard's alleged breaches  
10 of the standard of care "amounted to a wanton and reckless disregard for the wellbeing of  
11 [Decedent] as to constitute malice, gross negligence and oppression." She claims that Dr.  
12 Gollard's alleged failures to note the marked asymmetry in the size of Decedent's lower  
13 extremities, to contact his surgeon, to refer Decedent to the emergency department, and  
14 to work up the risk of DVT (deep vein thrombosis) warrant punitive damages. These  
15 allegations, even accepted as true, at best, amount to professional negligence. Moreover,  
16 Plaintiff's expert, Dr. Shaw, does not identify any "deliberate" or "egregious" deviations in  
17 the standard of care (on which he is not qualified to opine).

18         This is a straightforward case for professional negligence, punitive damage are not  
19 available to Plaintiff. Indeed, even accepting Plaintiff's allegations as true (which they are  
20 not), Dr. Gollard's actions amounted to an error in judgment. Allowing Plaintiff to seek  
21 punitive damages in this professional negligence case would effectively allow her to skirt  
22 the \$350,000 non-economic damages cap under NRS 41A.035. The Nevada damages  
23 limitation in NRS 41A.035 was overwhelmingly approved by Nevada voters in 2004 as part  
24 of tort reform to prevent doctors from fleeing the state due to rising malpractice costs. If  
25 Plaintiff is allowed to tack on punitive damages to their claim that Dr. Gollard violated the  
26 applicable standard of care, she will have thwarted the sound goal of NRS 41A et seq. It  
27 is particularly unfair to require Dr. Gollard to defend a punitive damages claim where there  
28 are no facts to demonstrate a culpable state of mind. Consequently, Plaintiff's prayer for

punitive damages should be denied.

### III. CONCLUSION

Allowing Plaintiff to utilize the affidavit of a doctor, who apparently have no experience in providing treatment as an oncologist, to support Plaintiff's Complaint against an oncologist, Dr. Gollard, would be wholly inconsistent with both the express language and purpose of NRS 41A.071. Accordingly, Defendant respectfully requests the Complaint be dismissed.

DATED this 29th day of December, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

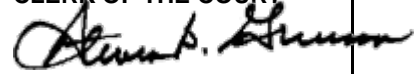
By /s/ Xiao Wen Jin  
 \_\_\_\_\_  
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 Las Vegas, Nevada 89118  
*Attorneys for Defendant Russell Gollard, M.D.*

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 29th day of December, 2021, a true and correct copy  
3 of **DEFENDANT RUSSELL GOLLARD, M.D.'S MOTION TO DISMISS** was served  
4 electronically with the Clerk of the Court using the Odyssey E-File & Serve system and  
5 serving all parties with an email-address on record, who have agreed to receive electronic  
6 service in this action.

7 AIMEE CLARK NEWBERRY, ESQ.  
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12 By /s/ Emma L. Gonzales  
13 An Employee of  
14 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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1 **OMD**

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10 *Attorney for Plaintiffs*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 STEPHANIE V. HIDALGO, individually and )  
14 as Special Administrator of the ESTATE OF )  
15 RENE HIDALGO, )

16 Plaintiffs, )

17 vs. )

18 RUSSELL GOLLARD, M.D.; DOES I )  
19 through X; and ROE CORPORATIONS I )  
20 through X, inclusive, )

21 Defendants. )

CASE NO.: A-21-842279-C

DEPT. NO.: XX

22 **PLAINTIFFS' OPPOSITION TO**  
23 **DEFENDANT RUSSELL GOLLARD,**  
24 **M.D.'S MOTION TO DISMISS**

25 Plaintiff STEPHANIE V. HIDALGO, individually and as Special Administrator of the  
26 ESTATE OF RENE HIDALGO ("Plaintiff") by and through her attorney of record Aimee  
27 Clark Newberry, of Clark Newberry Law Firm, hereby opposes defendant RUSSELL  
28 GOLLARD, M.D.'s Motion to Dismiss Plaintiff's Complaint. As discussed in more detail  
below, Dr. Gollard is not entitled to an Order dismissing the Complaint because Plaintiff's  
Complaint and supporting expert affidavit from Dr. Kevin Shaw are compliant with NRS  
41A.071, as Dr. Shaw's medical practice is substantially similar to that of Dr. Gollard, and  
Plaintiff's prayer for punitive damages is properly pled. This Opposition is made and based  
upon the following Memorandum of Points and Authorities, the Declaration of Aimee Clark

1 Newberry, with the attached document, and any such oral arguments as this Court may entertain  
2 at the time of hearing.

3 DATED this 6<sup>th</sup> day of January 2022.

4  
5 CLARK NEWBERRY LAW FIRM

6 /s/ Aimee Clark Newberry  
7 AIMEE CLARK NEWBERRY, ESQ.  
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10 Las Vegas, Nevada 89145  
11 *Attorney for Plaintiffs*  
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I, AIMEE CLARK NEWBERRY, declare:

- I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct, signed

AIMEE CLARK NEWBERRY

## I. BACKGROUND

On October 6, 2021, Plaintiff filed a Complaint against Dr. Gollard. She alleged wrongful death/medical malpractice and her Complaint included a prayer for punitive damages. Plaintiff's Complaint was accompanied by an affidavit from Dr. Kevin Shaw, in compliance with NRS

1 41A.071. (Exhibit A.)

2 **II. STANDARD OF REVIEW**

3 Nevada Rule of Civil Procedure 12(b)(5) allows a court to dismiss a case when the  
4 complaint fails “to state a claim upon which relief can be granted.” However, the Nevada  
5 Supreme Court “rigorously reviews de novo a district court order granting an NRCP 12(b)(5)  
6 motion to dismiss, accepting all of the plaintiff’s factual allegations as true and drawing every  
7 reasonable inference in the plaintiff’s favor to determine whether the allegations are sufficient to  
8 state a claim for relief.” *DeBoer v. Senior Bridges of Sparks Family Hospital, Inc.*, 128 Nev.  
9 406, 409 (2012). Further, a complaint may only be dismissed for failure to state a claim if “it  
10 appears beyond a doubt that it could prove no set of facts, which, if true, would entitle [the  
11 plaintiff] to relief.” *DeBoer v. Senior Bridges of Sparks Family Hospital, Inc.*, 128 Nev. 406,  
12 410 (2012).

13 **III. ANALYSIS**

14 **A. Dr. Shaw is qualified to offer an opinion against Dr. Gollard because his**  
15 **medical practice is substantially similar to that of Dr. Gollard**

16 NRS 41A.071 describes the expert report requirement in professional negligence  
17 actions. The issue here is whether Plaintiff complied with NRS 41A.071(2). That section  
18 requires an expert report be “submitted by a medical expert who practices or has practiced in an  
19 area that is substantially similar to the type of practice engaged in at the time of the alleged  
20 professional negligence.” The Nevada Supreme Court discussed this “substantially similar”  
21 standard in *Borger v. Eighth Judicial District Court*. See, *Borger v. Eighth Judicial Dist. Ct.*,  
22 120 Nev. 1021 (2004).

23 In *Borger*, the plaintiff provided a gastroenterologist’s affidavit to support his  
24 negligence claims against a general surgeon. The lower court errantly interpreted NRS  
25  
26  
27  
28

1 41A.071(2) to require the plaintiff's expert certify he engaged in the same medical specialty as  
2 the defendant. For example, according to the lower court in *Borger* improper interpretation of  
3 NRS 41A.071, a complaint against a general surgeon needed to be supported by an affidavit  
4 from a general surgeon, or face dismissal under NRS 41A.071(2).

5  
6 In vacating the lower court's dismissal and reinstating the action, the *Borger* Court held  
7 that NRS 41A.071(2):

8 "does not require that the affiant practice in the same area of medicine as  
9 the defendant; rather, it requires that the affiant practice in an area  
10 'substantially similar' to that in which the defendant engaged, giving rise to  
11 the malpractice action."

12 *Borger v. Eighth Judicial Dist. Ct.*, 120 Nev. 1021, 1028 (2004).

13  
14 In *Borger*, because the indications for surgery implicated gastroenterology, the Court  
15 held the gastroenterologist could testify against the general surgeon because the two  
16 professionals practiced in substantially similar areas, given the context of the case. *Id.*

17 Informing the *Borger* Court was an opinion from the Connecticut Appellate Court,  
18 *Marshall v. Yale Podiatry Group*. *Marshall v. Yale Podiatry Group*, 5 Conn.App. 5 (1985).  
19 Discussing a similar expert competency requirement, the Connecticut court stated "the threshold  
20 question of admissibility is governed by the scope of the witness' knowledge and not the  
21 artificial classification of the witness by title." *Borger* at 1027-1028.

22  
23 Here, *Borger* controls the instant dispute. *Borger* states a physician may offer an NRS  
24 41A.071 expert report against another physician if they practice "in an area substantially similar  
25 to that in which the defendant engaged, giving rise to the malpractice action." *Borger* at 1028;  
26 NRS 41A.071(2). Practice areas are substantially similar if the defendant's "diagnosis and  
27  
28

1 treatment...implicates [the expert's] area of expertise.”<sup>[1]</sup>

2 Dr. Shaw and Dr. Gollard’s practice areas are substantially similar. As in *Borger*, Dr.  
3 Gollard’s diagnosis and treatment” [or lack thereof] of the decedent’s symptoms of pulmonary  
4 embolism necessarily implicate Dr. Shaw’s area of expertise as a board certified pulmonary  
5 medicine, critical care and internal medicine physician.  
6

7 Additionally, Dr. Shaw’s affidavit, on its face affirms, under the penalty of perjury, that  
8 he and Dr. Gollard’s practices are substantially similar:

9 3. I have been asked to review the case of Mr. Rene Hidalgo (DOB 4/8/1975) with regard  
10 to his care and treatment provided in September and October 2020. Mr. Hidalgo was a  
11 45-year-old gentleman who died on 10/16/2020 from a saddle pulmonary embolism. As  
12 evidenced by my curriculum vitae, I am qualified to offer the opinions expressed in this  
13 affidavit regarding the care and treatment of Mr. Hidalgo due to my practice as a  
14 pulmonary medicine and internal medicine physician. ***My medical practice is***  
15 ***substantially similar to the events encountered by Dr. Gollard in his interaction with***  
16 ***Mr. Hidalgo. I diagnose and treat deep venous thromboses and pulmonary emboli on a***  
17 ***frequent basis.***

18 (Exhibit A.)

19 Dr. Gollard’s Motion to Dismiss incorrectly focuses on the artificial difference in Dr.  
20 Gollard and Dr. Shaw’s medical board certification, instead of focusing on the Nevada standard  
21 as articulated in *Borger*. This not a case where Dr. Gollard’s alleged negligence is so inherently  
22 tied to his specialty as an oncologist that his “diagnosis and treatment [does not] implicate [Dr.  
23 Shaw’s] area of expertise.” For example, this is not a case where Dr. Gollard, is being sued for  
24 negligently calculating chemotherapy dosages, an area of diagnosis and treatment that would  
25

---

26  
27 [1] *Borger* at 1028 ([T]he district court erred in its determination that [the affiant’s] area of practice was not  
28 substantially similar to that in which [the physician defendant] engaged with respect to this particular patient. The  
diagnosis and treatment rendered by [defendant physician] implicates [the affiant’s] area of expertise, the practice of  
gastroenterology. Thus, the statute was not violated when [the affiant] drew conclusions about perceived  
deficiencies in [defendant physician’s] diagnosis, choice of treatment modality and the surgical result obtained).

1 not implicate Dr. Shaw's area of expertise. Instead, this is a case where Dr. Gollard is being  
2 sued for negligently failing to diagnose and treat a pulmonary embolism in his clinic. Such  
3 negligence clearly implicates Dr. Shaw's area of expertise as a pulmonologist who in his clinic  
4 based practice encounters patients, like the decedent, who present to his clinic with pulmonary  
5 embolism. Dr. Shaw is therefore qualified under NRS 41A.071 and *Borger* to opine as to  
6 whether Dr. Gollard breached the standard of care in his failure to diagnose and treat the  
7 decedent's pulmonary embolism and Dr. Gollard's Motion to Dismiss must be denied.  
8

9 **B. *Borger* allows Plaintiff to amend her Complaint if this Court finds her expert's**  
10 **report deficient**  
11

12 The Defendant correctly cites *Washoe Medical Center* for the proposition that a  
13 complaint filed without an expert affidavit would be void and must be automatically dismissed  
14 under NRS 41A.071. Here, unlike in *Washoe Med.*, the Plaintiff's Complaint was filed with an  
15 expert affidavit. Here, only the affidavit's sufficiency is disputed, not its existence. If this Court  
16 finds the Plaintiff's expert's affidavit is deficient, the trend in this District is to apply *Borger*  
17 and allow amendment.  
18

19 In *Borger*, the Nevada Supreme Court addressed the "mandatory dismissal feature of  
20 NRS 41A.071." *Borger* at 1029. The Court stated "NRS 41A.071 is silent as to whether a  
21 district court may grant leave to amend where compliance with it is lacking." *Borger* at 1029.  
22 The Court was careful to note, however, that NRS 41A.071 "clearly mandates dismissal,  
23 without leave to amend, for complete failure to attach an affidavit to the complaint." *Borger* at  
24 1029. But, where the mere sufficiency of an affidavit is disputed, a complaint may be amended.  
25 The Court explained the following:  
26

27 "[W]e conclude that a district court, within its sound discretion and  
28 considering the need for judicial economy, may grant leave to amend  
malpractice complaints supported by disputed affidavits under

1 circumstances where justice so requires.”

2 *Borger* at 1029-1030.

3 While *Borger* was decided two years before *Washoe*, the latter case does not offer any  
4 negative opinion of the *Borger* language cited above. Also, *Borger* itself remains “good law”  
5 and has never received negative treatment from a published case. The most recent guidance on  
6 this issue was provided in *Orschel v. Valley Health. Orschel v. Valley Healthy Systems, LLC*,  
7 2019 WL 3337092 (2019). *Orschel* was decided in 2019, 13 years after *Washoe*. The *Orschel*  
8 Court stated “under *Borger*, the district court may grant leave to amend a defective affidavit.”  
9 *Orschel v. Valley Healthy Systems, LLC*, 2019 WL 3337092 (2019).

10 Here, unlike in *Washoe*, there is no dispute that the Plaintiff included an affidavit with  
11 his Complaint. Instead, here, like in *Borger*, only the affidavit’s sufficiency is disputed.  
12 Accordingly, under *Borger* and *Orschel*, NRS 41A.071’s automatic dismissal provision would  
13 not apply. Under *Borger* and *Orschel*, if this Court finds the Plaintiff’s affidavit deficient, it is  
14 within this Court’s “sound discretion” to grant leave to amend. *Borger* at 1029.

15  
16  
17 **C. Plaintiff has alleged sufficient facts to support a prayer for punitive damages**  
18

19 At the pleadings stage, under NRCP 12(b)(5), the question is whether there are  
20 sufficient allegations to support a claim. Dr. Gollard asks this Court to go well past that  
21 question, and seeks qualitative findings of fact and law as to whether Plaintiff is entitled to  
22 punitive damages under the facts of this case. That is a question to be saved for the time of trial,  
23 or perhaps at the time of a dispositive motion, not at the time of a NRCP 12(b)(5) motion to  
24 dismiss.

25 Here, Dr. Gollard very clearly alleges facts giving rise to a prayer for punitive  
26 damages:  
27

28 23. Defendants’ acts and omissions, including defendant RUSSELL GOLLARD,M.D.

1 failing to properly examine RENE HIDALGO on October 14, 2020, in failing to properly  
2 examine RENE HIDALGO, in failing to make accurate medical records, in failing to note  
3 marked asymmetry in the size of RENE HIDALGO's lower extremities, in failing to  
4 reach out to and discuss RENE HIDALGO's complaints and physical presentation with  
5 his surgeon, failing to refer RENE HIDALGO to the emergency department for  
6 evaluation of the deep veins in the pelvis and inferior vena cava, and failing to appreciate  
7 and work up the risk of DVT, amounted to a wanton and reckless disregard for the well-  
being of RENE HIDALGO as to constitute malice, gross negligence and oppression.

8 (Exhibit A.)

9 Plaintiff's prayer for punitive damages is therefore adequately pled. In the event this  
10 court is inclined to grant Dr. Gollard's motion as to the prayer for punitive damages, Plaintiff  
11 requests leave to amend.

12 **V. CONCLUSION**

13 As discussed in more detail above, Dr. Gollard is not entitled to an Order dismissing  
14 Plaintiff's Complaint because Plaintiff complied with NRS 41A.071, and Dr. Shaw is qualified  
15 to offer criticisms of Dr. Gollard's care and treatment of the decedent in his failure to diagnose  
16 pulmonary embolism as "[Dr. Shaw's medical practice is substantially similar to the events  
17 encountered by Dr. Gollard in his interaction with Mr. Hidalgo [because Dr. Shaw] diagnoses  
18 and treats deep venous thromboses and pulmonary emboli on a frequent basis." Exhibit A.  
19 Additionally, Dr. Gollard's failure to diagnose and treat the decedent's pulmonary embolism  
20 necessarily involves Dr. Shaw's area of expertise as a pulmonologist. Additionally, Plaintiff  
21 properly pled her prayer for punitive damages. Accordingly, Dr. Gollard's Motion to Dismiss  
22 must be denied.  
23  
24

25 ///

26 ///

27 ///

1 In the event that this Court grants either part, or the whole, of Dr. Gollard's Motion to  
2 Dismiss, Plaintiff respectfully requests leave to amend her Complaint.

3  
4 DATED this 6th day of January 2022.

5 CLARK NEWBERRY LAW FIRM

6 /s/ Aimee Clark Newberry  
7 AIMEE CLARK NEWBERRY, ESQ.  
8 Nevada Bar No. 11084  
9 410 S. Rampart Blvd., #390  
10 Las Vegas, Nevada 89145  
11 *Attorney for Plaintiffs*  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 6<sup>th</sup> day of January 2022, I served, via the Court's electronic filing  
3 system, a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANT**  
4 **RUSSELL GOLLARD, M.D.'S MOTION TO DISMISS** to the following:  
5

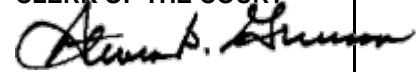
6 **Lewis Brisbois Bisgaard & Smith LLP**

7 <b>Name</b>	8 <b>Email</b>
9 Alissa Bestick	Alissa.Bestick@lewisbrisbois.com
10 Emma Gonzales	emma.gonzales@lewisbrisbois.com
11 Xiao Wen Jin, Esq.	xiaowen.jin@lewisbrisbois.com
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Keith A Weaver, Esq.	keith.weaver@lewisbrisbois.com
Danielle Woodrum	Danielle.Woodrum@lewisbrisbois.com

12  
13 /s/ Kathleen Seckinger  
14 Kathleen Seckinger, An Employee of  
15 Clark Newberry Law Firm  
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# EXHIBIT A

# EXHIBIT A



1 **COMP**

2 AIMEE CLARK NEWBERRY, ESQ.  
3 Nevada Bar No. 11084

4 **CLARK NEWBERRY LAW FIRM**

5 410 S. Rampart Blvd., Suite #390

6 Las Vegas, Nevada 89145

7 T: (702) 608-4232

8 F: (702) 946-1380

9 aclarknewberry@cnlawlv.com

10 *Attorney for Plaintiffs*

CASE NO: A-21-842279-C  
Department 20

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 STEPHANIE V. HIDALGO, individually )  
14 and as Special Administrator of the ESTATE )  
15 OF RENE HIDALGO )

16 Plaintiffs, )

17 vs. )

18 RUSSELL GOLLARD, M.D.; DOES I )  
19 through X; and ROE CORPORATIONS I )  
20 through X, inclusive, )

21 Defendants. )

CASE NO.:

DEPT. NO.:

**COMPLAINT**

*Arbitration Exemption- Medical  
Malpractice*

*Jury Trial Demanded*

22 COMES NOW plaintiffs STEPHANIE V. HIDALGO, individually and as Special  
23 Administrator of the ESTATE OF RENE HIDALGO, by and through their attorney of record,  
24 AIMEE CLARK NEWBERRY, ESQ. of CLARK NEWBERRY LAW FIRM for her causes of  
25 action against the defendants, and each of them, complains and alleges as follows:

**PARTIES AND JURISDICTION**

26 1. Plaintiff STEPHANIE V. HIDALGO at all times relevant to this lawsuit is and  
27 was a resident of Clark County, Nevada.

28 2. RENE HIDALGO died wrongfully and prematurely on October 16, 2020, in

1 Clark County, Nevada, and at all times relevant herein, was a resident of Clark County, Nevada.

2  
3 3. At all times relevant herein, prior to the death of RENE HIDALGO, plaintiff  
4 STEPHANIE V. HIDALGO and RENE HIDALGO were a married couple.

5 4. Upon information and belief, defendant RUSSELL GOLLARD, M.D. is, and was  
6 at all times relevant, a physician licensed to practice medicine in the State of Nevada pursuant to  
7 N.R.S. Chapters 449 and 630, and defendant RUSSELL GOLLARD, M.D. is, and was at all  
8 times relevant, practicing medicine in Clark County, Nevada.  
9

10 5. At times relevant DOES I through X, inclusive, were and now are physicians,  
11 surgeons, registered nurses, shift nurses, CNA's, licensed vocational nurses, practical nurses,  
12 registered technicians, aides, attendants, physician's, physician's assistants, therapists or medical  
13 nursing personnel holding themselves out as duly licensed to practice their professions under and  
14 by virtue of the laws of the State of Nevada, and were and/or are now engaged in the practice of  
15 their professions in the State of Nevada; that the true names, identities, or capacities, whether  
16 individual, corporate, associate, or otherwise, of DOES I through X, inclusive, are presently  
17 unknown to the Plaintiffs, who therefore sues said Defendants by such fictitious names; that the  
18 Plaintiffs are informed and believes, and thereupon alleges, that each of the Defendants sued  
19 herein as those are responsible in some manner for the injuries to Plaintiffs as alleged herein; that  
20 some DOE defendants include physicians, nurses, technicians, or other medical providers that  
21 consulted on RENE HIDALGO's care and treatment; that when the true names and capacities of  
22 such Defendants become known, Plaintiffs will ask leave of this Court to amend this Complaint  
23 to insert the true names, identities, and capacities, together with proper charges and allegations.  
24  
25

26  
27 6. At all times relevant, Defendants ROE CORPORATIONS I through X, inclusive,  
28 were and now are corporations, firms, partnerships, associations, other medical entities, other

1 medical providers involved in the care, treatment, diagnosis, surgery, and/or other provision of  
2 medical care to RENE HIDALGO; that the true names, identities, or capacities whether  
3 individual, corporate, associate or otherwise of the ROE CORPORATIONS I through X,  
4 inclusive, are presently unknown to Plaintiff, who therefore sues said Defendants by such  
5 fictitious names; that the Plaintiff is informed and believes and therefore alleges that each of the  
6 Defendants sued herein as ROE CORPORATIONS are responsible in some manner for the  
7 injuries and damages to the Plaintiff alleged herein and are liable based upon respondeat superior  
8 and for the negligent hiring, training and supervision of the physicians, staff, nurses, employees  
9 who were involved in the care and treatment of RENE HIDALGO; that when the true names and  
10 capacities of such Defendants become known, Plaintiffs will ask leave of this Court to amend  
11 this Complaint to insert the true names, identities, and capacities, together with proper charges  
12 and allegations.  
13  
14

15 7. At all times relevant, the Defendants were the agents, ostensible agents, servants,  
16 employees, employers, partners, co-owners/joint ventures, of each other and of their co-  
17 Defendants, and were acting within the course, purpose, and scope of their employment, agency,  
18 ostensible agency, ownership, and/or joint ventures and by reason of such relationships, the  
19 Defendants, and each of them, are vicariously and jointly and severally responsible and liable for  
20 the acts or omissions of the co-Defendants.  
21

22 8. At all times relevant hereto the conduct and activities hereinafter complained of  
23 occurred within Clark County, Nevada.  
24

### 25 **GENERAL ALLEGATIONS**

26  
27 9. Plaintiffs STEPHANIE V. HIDALGO, individually and as Special Administrator  
28 of the ESTATE OF RENE HIDALGO incorporate by reference all of their allegations of

1 paragraphs 1 through 8, above, and the attached affidavit, as though completely set forth herein.

2  
3 10. On September 24, 2020, RENE HIDALGO presented to defendant RUSSELL  
4 GOLLARD, M.D. with a history of squamous cell carcinoma of the scrotum.

5 11. On October 5, 2020, RENE HIDALGO presented to Sunrise Hospital and  
6 Medical Center with a complaint of scrotal pain. He was admitted and on October 6, 2020, Craig  
7 Hunter, M.D. performed a scrotoectomy, scrontoplasty, total penectomy, left orchiectomy,  
8 cystoscopy with left retrograde pyelogram and urethral stent placement.  
9

10 12. On or about October 11, 2020, RENE HIDALGO was discharged home from  
11 Sunrise Hospital and Medical Center. Following his discharge, RENE HIDALGO developed  
12 complaints of severe bilateral lower extremity swelling and pain.  
13

14 13. On October 13, 2020, RENE HIDALGO presented to Southwest Medical  
15 Associates Urgent Care with complaints of bilateral lower extremity swelling and pain. He  
16 reported the swelling had become significant. A limited ultrasound was obtained to rule out DVT  
17 and RENE HIDALGO was told to discuss his concerns at his appointment on October 14, 2020.  
18

19 14. On October 14, 2020, RENE HIDALGO presented to defendant RUSSELL  
20 GOLLARD, M.D. with a complaint of bilateral lower extremity swelling, which had increased in  
21 severity. Plaintiff STEPHANIE V. HIDALGO and RENE HIDALGO communicated their  
22 concerns about the bilateral lower extremity swelling to defendant RUSSELL GOLLARD, M.D.  
23 In response to their concerns, defendant RUSSELL GOLLARD, M.D. only did a cursory  
24 physical examination of RENE HIDALGO's lower extremities. Defendant RUSSELL  
25 GOLLARD, M.D. did not make any additional orders, referrals, recommendations or treatment  
26 plan relative to RENE HIDALGO's bilateral lower extremity swelling.  
27  
28

15. On October 16, 2020, RENE HIDALGO prematurely and wrongfully died of catastrophic pulmonary embolism.

16. Affidavit of Kevin Shaw, M.D., is attached hereto in compliance with NRS 41A.071 and incorporated herein by this reference as though fully set forth herein.

### FIRST CAUSE OF ACTION

**(Medical Negligence/Professional Negligence/Wrongful Death as to All Defendants)**

17. Plaintiffs STEPHANIE V. HIDALGO, individually and as Special Administrator of the ESTATE OF RENE HIDALGO incorporate by reference all of their allegations of paragraphs 1 through 16, above, and the attached affidavit, as though completely set forth herein

18. Defendants are providers of health care as set forth in NRS 41A.017.

19. Defendants owed RENE HIDALGO a duty to use the care and skill ordinarily exercised in similar medical situations, to use reasonable diligence and to use their best judgment in the exercise of skill and the application of learning in an effort to accomplish the purpose for which defendants were employed.

20. At all times mentioned herein, Defendants knew, or in the exercise of reasonable care, should have known, that the provision of medical care and treatment was of such a nature that if not properly given, it is likely to injure the persons to whom it is given.

21. Defendants, and each of them, breached their duties and fell below the standard of care for health care providers who possess the degree of professional learning, skill and ability of other similar health care providers by defendant RUSSELL GOLLARD, M.D. failing to properly examine RENE HIDALGO on October 14, 2020, in failing to properly examine RENE HIDALGO, in failing to make accurate medical records, in failing to note marked asymmetry in

1 the size of RENE HIDALGO's lower extremities, in failing to reach out to and discuss RENE  
2 HIDALGO's complaints and physical presentation with his surgeon, failing to refer RENE  
3 HIDALGO to the emergency department for evaluation of the deep veins in the pelvis and  
4 inferior vena cava, and failing to appreciate and work up the risk of DVT.  
5

6 22. The negligence and carelessness of Defendants in treating and or failing to treat  
7 RENE HIDALGO was the direct and proximate result of the wrongful and untimely death of  
8 RENE HIDALGO.  
9

10 23. Defendants' acts and omissions, including defendant RUSSELL GOLLARD,  
11 M.D. failing to properly examine RENE HIDALGO on October 14, 2020, in failing to properly  
12 examine RENE HIDALGO, in failing to make accurate medical records, in failing to note  
13 marked asymmetry in the size of RENE HIDALGO's lower extremities, in failing to reach out to  
14 and discuss RENE HIDALGO's complaints and physical presentation with his surgeon, failing  
15 to refer RENE HIDALGO to the emergency department for evaluation of the deep veins in the  
16 pelvis and inferior vena cava, and failing to appreciate and work up the risk of DVT, amounted  
17 to a wanton and reckless disregard for the well-being of RENE HIDALGO as to constitute  
18 malice, gross negligence and oppression. As such, plaintiffs are entitled to punitive and  
19 exemplary damages.  
20

21 24. As a direct and proximate result of defendants' actions and or failure to act,  
22 plaintiffs suffered general and special damages, including but not limited to, medical expenses,  
23 funeral expenses, lost financial support, lost household services, RENE HIDALGO's pain and  
24 suffering, STEPHANIE V. HIDALGO's pain and suffering and the loss of the love and  
25 companionship of RENE HIDALGO suffered by STEPHANIE V. HIDALGO, each in an  
26 amount in excess of Fifteen Thousand Dollars (\$15,000).  
27  
28

1           25. As a further direct and proximate result of defendants' conduct, plaintiffs were  
2 compelled to retain the services of an attorney in this matter, and is therefore entitled to  
3 reasonable attorney's fees and costs therein.  
4

5  
6                                   **PRAYER FOR RELIEF**

7           Wherefore plaintiffs pray for relief from defendants, and each of them, as follows:

- 8           1. For general damages in excess of Fifteen Thousand Dollars (\$15,000);  
9           2. For special damages in excess of Fifteen Thousand Dollars (\$15,000);  
10          3. For punitive and exemplary damages in excess of Fifteen Thousand Dollars  
11           (\$15,000);  
12          4. For plaintiffs' costs and disbursements of this suit;  
13          5. For reasonable attorney's fees incurred herein; and,  
14          6. For such further relief as this Court may deem just and equitable.  
15

16          DATED this 6<sup>th</sup> day of October 2021.  
17

18                                   CLARK NEWBERRY LAW FIRM

19                                   /s/ Aimee Clark Newberry  
20                                   AIMEE CLARK NEWBERRY, ESQ.  
21                                   Nevada Bar No. 11084  
22                                   410 S. Rampart Blvd., #390  
23                                   Las Vegas, Nevada 89145  
24                                   Attorney for Plaintiffs  
25  
26  
27  
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# EXHIBIT 1

# EXHIBIT 1

Expert Affidavit of Dr. Kevin Shaw

1. I am a physician licensed to practice medicine in the state of California. I am board certified in internal medicine, critical care medicine, and pulmonary diseases.
2. A copy of my current curriculum vitae is attached, which outlines my education, training, qualifications, and experience to provide the opinions contained herein.
3. I have been asked to review the case of Mr. Rene Hidalgo (DOB 4/8/1975) with regard to his care and treatment provided in September and October 2020. Mr. Hidalgo was a 45-year-old gentleman who died on 10/16/2020 from a saddle pulmonary embolism. As evidenced by my curriculum vitae, I am qualified to offer the opinions expressed in this affidavit regarding the care and treatment of Mr. Hidalgo due to my practice as a pulmonary medicine and internal medicine physician. My medical practice is substantially similar to the events encountered by Dr. Gollard in his interaction with Mr. Hidalgo. I diagnose and treat deep venous thromboses and pulmonary emboli on a frequent basis.
4. All opinions expressed in this affidavit are made to a reasonable degree of medical probability.
5. In preparation for this affidavit, I reviewed the autopsy report of Mr. Rene Hidalgo dated 10/19/2020. I reviewed the declaration of his widow, Ms. Stephanie Hidalgo, dated 9/22/2021. I reviewed the emergency department records from North Vista Hospital, where Mr. Hidalgo was taken after his cardiac arrest. I reviewed clinic notes from Optumcare, including visits with Dr. Sabreen Boone and Dr. Russell Gollard. Lastly, I reviewed records from an urgent care visit to Southwest Medical Associates dated 10/13/2020.
6. On 9/24/2020 Mr. Hidalgo was seen by Dr. Russell Gollard, and oncologist with Optumcare Cancer Center due to a recent diagnosis of squamous cell carcinoma of the scrotum. The patient had already seen a urologist, Dr. Craig Hunter, and Dr. Gollard ordered a PET/CT scan for Mr. Hidalgo.
7. On 10/5/2020 the patient presented to Sunrise Hospital and Medical Center with complaints of scrotal pain. He was admitted with a diagnosis of sepsis and received antibiotics and fluid resuscitation.
8. On 10/6/2020 he was taken to the OR by Dr. Craig Hunter where he received scrotoectomy, scrotoplasty, total penectomy, left orchiectomy, cystoscopy with left retrograde pyelogram and ureteral stent placement, and biopsies of inguinal lymph nodes.
9. The patient presented to Southwest Medical Associates urgent care on 10/13/2020 where he was seen by Ian Fero, PA-C complaining of left leg swelling. A left leg duplex ultrasound was performed that evening, and was reported as negative for venous thromboses.
10. He saw his oncologist, Dr. Russell Gollard, the following day. According to the patient's wife, she expressed significant concern regarding his left leg swelling. According to Ms. Hidalgo's statement, her concerns were dismissed and the patient was not adequately examined. She also reports that Dr. Gollard never inquired as to the workup performed the evening prior, including the duplex ultrasound.
11. The patient suffered a cardiac arrest on the morning of 10/16/2020. EMS providers found him in asystole and pulseless electrical activity.
12. Despite aggressive cardiopulmonary resuscitation Mr. Hidalgo died at 8:51 AM.

13. Dr. Russell Gollard breached the standard of care by failing to properly examine Mr. Hidalgo at the time of his clinic visit on 10/14/2020. The patient's widow describes little if any examination of the extremities. The documented physical examination confirms this suspicion, as several physical exam findings recorded by Dr. Gollard were blatantly inaccurate.

14. The standard of care for Dr. Gollard required that he perform a thorough physical examination. Had he done this, he would have noticed marked asymmetry in the size of Mr. Hidalgo's lower extremities.

15. The standard of care with a required a discussion with the patient's surgeon regarding these findings, as well as a referral to the emergency department for venography to evaluate the deep veins of the pelvis and inferior vena cava.

16. Given Dr. Gollard's expertise as an oncologist and hematologist, he should have been aware that Mr. Hidalgo was at increased risk for deep venous thromboses given his diagnosis of cancer and his recent surgery.

17. By failing to practice within the standard of care, these breaches of Dr. Gollard directly lead to the pain, suffering, and death of Mr. Hidalgo who suffered a catastrophic saddle pulmonary embolism.

18. Had the standard of care been upheld by Dr. Gollard, Mr. Hidalgo would have been diagnosed with a deep venous thrombosis and would have been a candidate for life-saving therapeutic anticoagulation.

19. I reserve the right to alter or augment my opinion as more medical records and information are available to me going forward in this case.

I declare under the penalty of perjury under the laws of the State of California in the State of Nevada that the foregoing is true and correct.

Sincerely,



Kevin Shaw, M.D.

## Kevin Daniel Shaw, M.D.

756 Barbara Ave.  
Solana Beach, CA 92075  
(858) 354-6331  
Email: kshawmd@gmail.com

---

### Positions:

2019-Present	Medical Director, Scripps Encinitas Respiratory Care
2017-Present	Medical Director, Scripps Encinitas Intensive Care Unit
2017-Present	ECMO Physician Leader, Scripps Healthcare System
2017-Present	Pulmonary/Critical Care, Scripps Healthcare System
2016	Medical Director, Sharp Coronado Intensive Care Unit
2015-2018	Pulmonary/Critical Care, Sharp Healthcare System
2015-2017	Clinical Instructor, UCSD
2010-2015	Associate Clinical Professor of Medicine, UCSD
2010-2015	Associate Director, UCSD Adult Cystic Fibrosis Clinic
2011-2013	Medical Director, UCSD Pulmonary Procedures
2012-2015	Associate Director, UCSD Fellowship Training Program
	Division of Pulmonary and Critical Care Medicine

### Affiliations:

2017-Present	Scripps Memorial Hospital Encinitas 354 Santa Fe Dr. Encinitas, CA 92024
2016-2017	Sharp Coronado Hospital 250 Prospect Pl Coronado, CA 92118
2015-2018	Sharp Memorial Hospital 7901 Frost St. San Diego, CA 92123
2007-2016	University of California, San Diego - Hillcrest Hospital 200 W. Arbor Drive San Diego, CA 92103
2007-2016	University of California, San Diego - Thornton Hospital 9300 Campus Point Drive San Diego, CA 92037

### Education:

1996-1999	University of California San Diego <i>Bachelor of Science, Molecular Biology</i>
2000-2004	University of California San Diego School of Medicine <i>Doctor of Medicine</i>

**Postdoctoral Training:**

2004-2005	Internship in Internal Medicine University of Utah, Salt Lake City, UT
2005-2007	Residency in Internal Medicine University of Utah, Salt Lake City, UT
2007-2010	Fellowship in Pulmonary and Critical Care Medicine University of California San Diego

**Licensure and Certification:**

2004-Present	Advanced Cardiac Life Support Provider
2005	National Board of Medical Examiners
2005-2008	Utah Physician and Surgeon License Certificate No. 6020023-1205
2005-Present	Drug Enforcement Agency Certificate No. BS9552577
2007-Present	California Physician and Surgeon License Certificate No. A99042
2007-Present	American Board of Internal Medicine Internal Medicine Certification #278055
2010-Present	Fluoroscopy Supervisor and Operator License Certificate No. RHC169555
2010-Present	American Board of Internal Medicine, Pulmonary Disease Certification #278055
2011-Present	American Board of Internal Medicine, Critical Care Medicine Certification #278055

**Professional Memberships:**

2007-Present	Society of Critical Care Medicine
2009-Present	American Thoracic Society
2009-Present	American College of Chest Physicians
2010-Present	California Thoracic Society

**Honors and Awards:**

1996-2000	Provost's Honors Each Quarter University of California San Diego
1997	Golden Key National Honor Society
1999	Phi Beta Kappa
2000	Honors at Graduation, Department of Biology University of California San Diego
2000	Magna Cum Laude University of California San Diego
2005	Outstanding Intern of the Year University of Utah Department of Internal Medicine
2011	Chief Residents' Teaching Award University of California San Diego

2012-2013	San Diego Magazine “Top Doctor” Critical Care Medicine
2012-2014	Kaiser Excellence in Teaching Award Nominee
2013	Scripps Ranch Civic Association Certificate of Appreciation for Community Medical Education
2013	Valedictorian, National Center of Leadership in Academic Medicine (NCLAM)
2015-2017	San Diego Magazine “Top Doctor” Critical Care Medicine
2016	Sharp Healthcare Guardian Angel Award
2018-2021	San Diego Magazine “Top Doctor” Pulmonary/Critical Care Medicine
2021	California Magazine “Top Doctor” Pulmonary Medicine

### **Committee Assignments:**

2009-2010	UCSD PCCM Training Grant Committee
2009-2010	American Thoracic Society Assembly on Allergy, Immunology, and Inflammation
2009-2010	Graduate Medical Education Committee
2009-2012	San Diego Cystic Fibrosis Interest Group
2009-2015	UCSD Critical Care Committee
2010-2012	UCSD PCCM ICU Staffing Committee
2010-2013	Cystic Fibrosis Foundation Therapeutics Development Network, Protocol Review Committee
2010-2015	PCCM Fellowship Education Committee UCSD, Division of Pulmonary and Critical Care Medicine
2010-2015	Faculty Interviewer UCSD Internal Medicine Residency Recruitment
2011	UCSD Representative Forum on Improving Critical Care in California: Potential Role of Tele-ICU Medicine
2012-2013	Cystic Fibrosis Foundation, eQUIP-CR Program UCSD Cystic Fibrosis Research Team Leader
2013-2014	UCSD Central Line-Associated Blood Stream Infections Committee
2014-2015	UCSD Ethics Committee
2014-2015	UCSD CTRI Pilot Grant Reviewer
2014-2015	Cystic Fibrosis Foundation Therapeutics Development Network, Presentations and Publications Committee
2017-Present	Scripps Encinitas Code Blue Committee
2017-Present	Scripps Encinitas Sepsis Committee
2019-Present	Scripps Encinitas Medical Director’s Council

**Educational Service:**

2004-2007	Instructor, Physical Exam Course University of Utah School of Medicine
2007-Present	Instructor, Phlebotomy Course UCSD School of Medicine
2008-2011	Instructor, Introduction to Clinical Medicine UCSD School of Medicine
2009	Organizer and Instructor Pulmonary and Critical Care Fellowship Cadaver Lab
2009	Speaker and Instructor, UCSD Residents' Conference Critical Care Medicine Board Review
2009-2011	Speaker and Instructor, UCSD Residents' Conference Principles of Thoracentesis
2009-2011	Instructor, Objective Structured Clinical Examination UCSD School of Medicine
2009-2015	Speaker and Instructor, UCSD Residents' Conference Ultrasound-Guided Central Line Placement
2010	Speaker and Instructor, UCSD Residents' Conference Introduction to Mechanical Ventilation
2010-2011	Speaker and Instructor, UCSD Residents' Conference Introduction to Bronchiectasis
2010-2011	Speaker and Instructor, UCSD Residents' Conference Cystic Fibrosis Guide to Management
2011-2015	Instructor, Problem Based Learning Small Group UCSD School of Medicine
2011-2015	Faculty Reviewer UCSD Critical Care Nursing Education Conference
2011-2016	Instructor, Pulmonary Systems II Curriculum UCSD School of Medicine
2012	Faculty Discussant, GI Fellows' Conference Gastrointestinal Effects of Cystic Fibrosis
2012	Faculty Consultant UCSD Pharmacy Ground Rounds Presentation
2012-2015	Speaker and Instructor, Medicine R2 Transition Day Ultrasound-Guided Central Line Placement
2012-2015	Speaker and Instructor, PCCM Fellowship Orientation Ultrasound-Guided Central Line Placement
2012-2015	Clinical Director, Pulmonary Systems II Curriculum UCSD School of Medicine
2012-2015	Instructor, Clinical Correlation Conference UCSD School of Medicine
2012-2015	Director, Phlebotomy Course UCSD School of Medicine
2013	Speaker and Instructor UCSD Undergraduate Medical Education Expo
2013-2015	Clinical Director, Pulmonary Systems I Curriculum UCSD School of Medicine
2013-2015	Speaker and Instructor, Medicine Intern Orientation

2013-2015	Ultrasound-Guided Central Line Placement Speaker and Instructor, UCSD Hospitalists Seminar Invasive Procedures for Hospitalists
2014	Speaker and Faculty Reviewer UCSD ICU Case Study Investigation Conference
2015	Speaker and Instructor, Scripps Mercy Residents' Conference; Bronchiectasis
2016	Speaker and Instructor, ICU Updates Conference Sepsis and Septic Shock
2017	Speaker and Instructor, San Diego American Association of Critical Care Nurses; ECMO Implementation

### **Community Service:**

2000-2002	Mentor UCSD Premedical Association of Students for Service
2001	UCSD-Honduras Medical Education Partnership
2001-2002	Medical Student Volunteer UCSD Student-Run Free Clinic
2001-2004	Medical Student Liaison, VIIDAI ( <a href="http://www.viidai.com/">http://www.viidai.com/</a> ) Viajes Interinstitucional de Integración Docente, Asistencial y de Investigación
2009-2018	Medical Director Scripps Ranch Old Pros 4 <sup>th</sup> of July Run & Ride
2010	Speaker and Instructor Southern California Asthma Medical Program
2010	Medical Director, Scripps Ranch Community Association 40 <sup>th</sup> Anniversary Run-Walk Event
2010-Present	Speaker and Instructor St. Augustine High School Water Safety Course
2012-Present	CPR and AED Training to Scripps Ranch Community

### **Research Experience:**

Laboratory Technician, 1997-1999, University of California San Diego.  
Principal Investigator Jeffrey Esko, Ph.D. Assisted with multiple research projects, with responsibilities including screening a cDNA library, cloning, sequencing, plasmid construction, and initiation of a yeast 2-hybrid system to investigate Golgi apparatus protein interactions.

Research Fellow in Pulmonary and Critical Care Medicine, 2008-2010, University of California San Diego. Principal Investigator Paul Quinton, Ph.D. Our project included determination of electrolyte transport properties in the intact lower murine airways. We developed a novel assay which uses perfused *ex-vivo* murine lungs, in an attempt to better replicate *in-vivo* conditions than is possible with cell culture models. Specific topics of investigation included the roles of CFTR and the calcium-activated chloride channel, comparing both wild type and  $\Delta F508$  cystic fibrosis mice.

A Phase 3, International, Multi-Center, Randomized, Double-Blind, Placebo-Controlled, Parallel-Group Efficacy and Safety Study of Denufosol Tetrasodium Inhalation Solution in Patients with Cystic Fibrosis Lung Disease and FEV<sub>1</sub> greater than or equal to 75% but less than or equal to 110% Predicted TIGER-2 (Inspire 08-110) Amendment 1 / Co-PI HRPP #081213 Closed 4/25/11  
Protocol Title: Study 08-114: Open-label Extension of Study 08-110, A Multi-Center Study of Denufosol Tetrasodium Inhalation Solution in Patients with Cystic Fibrosis Lung Disease Amendment: January 20, 2010 (Inspire Tiger 2 Open Label Study) / Co-PI HRPP #101101 Closed 5/5/11

Clofazimine for single patient use. / PI HRPP #101879 Closed 8/12/11

A Phase 3 Efficacy and Safety Study of PTC124 as an Oral Treatment for Nonsense-Mutation-Mediated Cystic Fibrosis PTC-124-GD-009-CF; Protocol Version 2 / Co-PI HRPP #091065 Closed 4/10/12

A Phase 3, Open-Label, Randomized Trial to Evaluate the Safety and Efficacy of MP-376 Inhalation Solution (Aeroquin™) Versus Tobramycin Inhalation Solution (TIS) in Stable Cystic Fibrosis; Study Number: MPEX-209 / PI HRPP #110852

A Phase 3, Multi-Center, Multinational, Randomized, Double-Blind, Placebo-Controlled Study to Evaluate the Efficacy and Safety of MP-376 (Levofloxacin Inhalation Solution; Aeroquin™) in Stable Cystic Fibrosis Patients; Study Number: MPEX 207 / Co-PI HRPP #110431

A Phase 3, Randomized, Double-Blind, Placebo-Controlled, Multicenter Study of Aztreonam for Inhalation Solution (AZLI) in a Continuous Alternating Therapy (CAT) Regimen of Inhaled Antibiotics for the Treatment of Chronic Pulmonary Pseudomonas aeruginosa Infection in Subjects with Cystic Fibrosis; Study Number: GS-US-205-0170 / PI HRPP #121356

A Long-Term Prospective Observational Safety Study of the Incidence of and Risk Factors for Fibrosing Colonopathy in US Patients with Cystic Fibrosis Treated with Pancreatic Enzyme Replacement Therapy: A Harmonized Protocol Across Sponsors; Study Number: CFFC-OB-11 / PI HRPP #121086

A Phase 3, Randomized, Double-Blind, Placebo-Controlled, Parallel-Group Study to Evaluate the Efficacy and Safety of Lumacaftor in Combination with Ivacaftor in Subjects Aged 12 Years and Older With Cystic Fibrosis, Homozygous for the F508del-CFTR Mutation; Study Number: VX12-809-103 / Sub-PI HRPP #130404

A Phase 2, Multicenter, Double-Blind, Placebo-Controlled, Multiple-Dose Study to Evaluate the Safety, Tolerability, Efficacy, Pharmacokinetics, and Pharmacodynamics of Lumacaftor Monotherapy, and Lumacaftor and Ivacaftor Combination Therapy in Subjects With Cystic Fibrosis, Homozygous or Heterozygous for the F508del-CFTR Mutation; Study Number: VX12-809-102 / PI HRPP #131206

A Phase 3, Rollover Study to Evaluate the Safety and Efficacy of Long-term Treatment With Lumacaftor in Combination With Ivacaftor in Subjects Aged 12 Years and Older With Cystic Fibrosis, Homozygous or Heterozygous for the F508del-CFTR Mutation; Study Number: VX12-809-105 / Sub-PI HRPP #131505

### Grant Support:

2009-2010	Cystic Fibrosis Foundation 3 <sup>rd</sup> Year Clinical Fellowship
2010-2013	Cystic Fibrosis Foundation Program for Adult Care Excellence (PACE) Award
2013-2014	UC San Diego Academy of Clinical Scholars Faculty Development Award

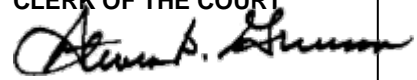
### Presentations:

1. American College of Physicians Utah Chapter, Clinical Vignette Competition 2006, Runner-Up. *An Unusual Insulinoma Case.*
2. American Thoracic Society International Conference 2009. *A Novel Assay to Investigate Ion Transport Across Mouse Airway Epithelium.*
3. North American Cystic Fibrosis Conference 2009. *Evidence of  $\Delta F508$  CFTR Activity in the Intact Native Lower Airways of the CF Mouse.*
4. UCSD Summer Critical Care Conference 2010. *Advanced Modes of Ventilation.*
5. California Thoracic Society 2011. *75 y.o. Female with Dry Cough.*
6. Rady Children's Hospital Cystic Fibrosis Family Education Day 2012. *Transition to the Adult Clinic.*
7. Topics & Advances in Pulmonary and Critical Care Medicine 2013. *Ultrasound-Guided Central Line Placement, Hands-on Simulation Session.*
8. Rady Children's Hospital Bioethics Education Program 2013. *A Transition Too Late: Efforts at the End of Life.*
9. American Thoracic Society Resident Boot Camp 2014. *Airway Management 101.*
10. UCSD Heart/Lung Transplant Conference 2014. *Cystic Fibrosis and Lung Transplant.*
11. Rady Children's Hospital Cystic Fibrosis Staff Education Day 2014. *Cystic Fibrosis and Transition.*
12. ICU Updates Course at Sharp Memorial Hospital 2016. *Evaluation and Management of Sepsis and Septic Shock.*
13. R<sup>3</sup> REANIMATE ECMO Conference 2017. *After Cannulation - ECMO Management and Troubleshooting.*
14. American Association of Critical Care Nurses, San Diego Chapter, Fall Conference 2017. *Venovenous ECMO.*

### Publications:

1. Mahmud E, Shaw KD, Penny WF. *Patients at low risk for periprocedural myocardial infarction can be identified by assessment immediately following percutaneous coronary intervention.* J Invasive Cardiol 15:343-7, 2003
2. Shaw KD. *Pulmonary Function Tests in Clinical Decision Support: Hospital Medicine*, edited by Wiese J, Auerbach A, Glasheen J, Li K. Decision Support in Medicine, LLC. Wilmington, DE; 2012.

3. Shaw KD, Johnson MB, Chang W. *Thoracentesis* in Clinical Decision Support: Hospital Medicine, edited by Wiese J, Auerbach A, Glasheen J, Li K. Decision Support in Medicine, LLC. Wilmington, DE; 2012.
4. Shaw KD. *Bronchiectasis* in Manual of Clinical Problems in Pulmonary Medicine, edited by Morris TA, Ries AL, Bordow RA. Lippincott Williams & Wilkins; 2014.
5. Shaw KD, Scholten E, Makani SM. *Thoracentesis* in Clinical Decision Support: Hospital Medicine, edited by Miller C, Burger A, Lai C, Pahwa A. Decision Support in Medicine, LLC. Wilmington, DE; 2016.



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8 *M.D.*

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 STEPHANIE V. HIDALGO, individually  
and as Special Administrator of the  
12 ESTATE OF RENE HIDALGO,

13 Plaintiffs,

14 vs.

15 RUSSELL GOLLARD, M.D.; DOES I  
16 through X; and ROE CORPORATIONS I  
17 through X, inclusive,

18 Defendants.

Case No. A-21-842279-C

Dept. No.: 20

**REPLY IN SUPPORT OF DEFENDANT  
RUSSELL GOLLARD, M.D.'S MOTION  
TO DISMISS**

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1 Defendant Russell Gollard, M.D. ("Defendant" or "Dr. Gollard"), by and through his  
2 attorneys, LEWIS BRISBOIS BISGAARD & SMITH LLP, hereby submits this Reply in  
3 Support of his Motion to Dismiss pursuant to NRCP 12(b)(5) and NRS 41A.071.

4 This Reply is based upon the papers and pleadings on file herein, the attached  
5 Memorandum of Points and Authorities and any such oral argument that may be heard at  
6 the hearing on this matter.

7 DATED this 26th day of January, 2022.

8  
9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10  
11 By /s/ Xiao Wen Jin  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. LEGAL ARGUMENT AND ANALYSIS

3 A. Plaintiff's Complaint Must Be Dismissed Because Dr. Shaw Does Not  
4 Practice in an Area that is Substantially Similar to Dr. Gollard's Practice and  
Plaintiff is Prohibited from Amending Her Complaint.

5 "NRS 41A.071 was adopted as part of the 2002 medical malpractice tort reform that  
6 abolished the Medical-Legal Screening Panel." *Washoe Med. Ctr. v. Second Judicial Dist.*  
7 *Court*, 122 Nev. 1298, 1304, 148 P.3d 790 (2006). It establishes the prerequisites for  
8 initiating and maintaining an action for medical malpractice in Nevada and compliance is  
9 required "to lower costs, reduce frivolous lawsuits, and ensure that medical malpractice  
10 actions are filed in good faith based upon competent medical opinion." *See id.* (citation  
11 omitted). The Nevada Legislature was concerned with strengthening the expert witness  
12 requirements for medical malpractice cases. *See id.* The legislative history further shows  
13 that "a medical expert's affidavit was necessary for the district court to confirm that the case  
14 was meritorious[;]" that "there needed to be a deterrent from cases being filed in order to  
15 get a quick settlement, and that the affidavit requirement would protect against this by  
16 ensuring that medical records would be reviewed by an expert before a case was filed." *Id.*  
17 (citation and emphasis omitted). Indeed, "the statute clearly works against frivolous  
18 lawsuits filed with some vague hope that a favorable expert opinion might eventually  
19 surface." *Borger v. Eighth Judicial Dist. Court*, 120 Nev. 1021, 1029, 102 P.3d 600 (2004).  
20 In other words, a plaintiff must demonstrate from the outset of his or her case that each of  
21 the expert requirements of NRS 41A.071 have been satisfied. The Nevada Supreme Court  
22 has repeatedly made clear that "[b]ecause a complaint that does not comply with NRS  
23 41A.071 is void *ab initio*, it does not legally exist and thus it cannot be amended. *Washoe*,  
24 122 Nev. at 1304; *Alemi v. Eighth Judicial Dist. Ct. of Nev.*, 132 Nev. 938 (2016);  
25 *Dekker/Perich/Sabatini Ltd. v. Eighth Judicial Dist. Court*, 495 P.3d 519, 524 (Nev. 2021).  
26 This is because "NRS 41A.071 is jurisdictional in nature." *Dekker*, 495 P.3d at 524 (citation  
27 omitted).

28 Here, Plaintiff's submission of Dr. Shaw's Affidavit to support her claims against

1 Dr. Gollard violates the very purpose for which the requirements in NRS 41A.071 were  
2 imposed. Because his Affidavit has not and cannot satisfy those requirements, Plaintiff's  
3 Complaint must be dismissed.

4                   1.       *Dr. Shaw has not and does not Practice in an Area that is Substantially*  
5                               *Similar to Dr. Gollard's Practice.*

6           NRS 41A.071 commands, among other things, that "the district court shall dismiss  
7 an action . . . if the action is filed without an affidavit that . . . [i]s submitted by a medical  
8 expert who practices or has practiced in an area that is substantially similar to the type of  
9 practice engaged in at the time of the alleged professional negligence." NRS 41A.071(2)  
10 (emphasis added). Indeed, Plaintiff admits that the statute "requires an expert report be  
11 'submitted by a medical expert who practices or has practiced in an area that is  
12 substantially similar to the type of practice engaged in at the time of the alleged professional  
13 negligence.'" See Pl.'s Opp'n at p 5 (emphases added).

14           "The possession of a medical degree does not qualify a physician to offer expert  
15 testimony on every medical question[]" and "[g]iven the increasingly specialized and  
16 technical nature of medicine, such a rule would ignore the modern realities of medical  
17 specialization and eliminate the trial court's role of ensuring that those who purport to be  
18 experts truly have expertise concerning the actual subject about which they are offering an  
19 opinion." *McMahon v. Smith & Nephew Richards, Inc.*, No. 14-99-00616-CV, 2000 Tex.  
20 App. LEXIS 4746, \*7-\*8 (Tex. App. July 20, 2020) (unpublished disposition) (citations  
21 omitted). "The proponent of the testimony has the burden to show that the expert  
22 'possesses special knowledge as to the very matter on which he proposes to give an  
23 opinion.'" *Id.* at \*8 (citations omitted). "[T]he fact that an expert witness states that he or she  
24 is familiar with the applicable standard of care does not, ipso facto, render the testimony  
25 admissible." *McDaniel v. Ruston*, No. W2008-00674-COA-R3-CV, 2009 Tenn. App. LEXIS  
26 182, \*38 (Tenn. Ct. App. May 5, 2009) (unpublished disposition) (citation omitted); *Danhoff*  
27 *v. Fahim*, No. 352648, 2021 Mich. App. LEXIS 2850, \*16 (Mich. Ct. App. May 6, 2021) ("the  
28 ipse dixit of an expert is insufficient to establish the standard of care in medical malpractice

1 cases.”) (citation omitted).

2 Without any evidence or authority, Plaintiff asserts that “Dr. Shaw and Dr. Gollard’s  
3 practice areas are substantially similar.” *See* Pl.’s Opp’n at p. 7. Plaintiff’s bald claim is  
4 incorrect. Dr. Gollard is an oncologist, while Dr. Shaw specializes in internal medicine,  
5 critical care medicine, and pulmonary diseases. *See* Dr. Shaw’s Affidavit and Curriculum  
6 Vitae, Ex. 1 to Pl.’s Compl. Indeed, a review of Dr. Shaw’s curriculum vitae makes clear  
7 that his practice focuses on pulmonary and critical care medicine and his fellowship training  
8 was in those two areas. Accordingly, Plaintiff’s bald conclusion is incorrect and must be  
9 rejected.

10 Next, Plaintiff asserts that “Dr. Gollard’s diagnosis and treatment [or lack thereof] of  
11 the decedent’s symptoms of pulmonary embolism necessarily implicate Dr. Shaw’s areas  
12 of expertise as a board certified pulmonary medicine, critical care and internal medicine  
13 physician.” *See* Pl.’s Opp’n at p. 7. Plaintiff’s argument fails. First, Dr. Gollard was not  
14 treating a pulmonary embolism; instead, Dr. Gollard, as an oncologist, was treating the  
15 decedent’s cancer. Second, even if Plaintiff’s assertion is correct (which it is not), the mere  
16 “implication” of “Dr. Shaw’s areas of expertise of as a board certified pulmonary medicine,  
17 critical care and internal medicine physician[]” is not enough. *See e.g. Werner v. Nanticoke*  
18 *Mem. Hosp., Inc.*, No. N12C-02-191 JAP, 2014 Del. Super. LEXIS 570, \*5 (Del. Super.  
19 Nov. 3, 2014) (unpublished disposition) (“The fact that [the emergency medicine  
20 physician]’s care of [the plaintiff] touched upon neurological issues does not mean he is  
21 acting as a neurologist any more than his emergency treatment of a high school football  
22 player with an injured knee means he is acting as an orthopedic surgeon.”).

23 Indeed, Plaintiff argues that “the threshold question of admissibility is governed by  
24 the scope of the witness’ knowledge and not the artificial classification of the witness by  
25 title.” *See* Pl.’s Opp’n at p. 7 (citation omitted) (emphasis added). In other words, in order  
26 to be qualified to render standard of care opinions against Dr. Gollard, Dr. Shaw must have  
27 sufficient knowledge of the standard of care applicable to an oncologist, which he does not  
28 possess.

1 A review of Dr. Shaw's Affidavit and curriculum vitae demonstrates that he does not  
2 possess the requisite knowledge to offer opinions about the standard of care applicable to  
3 an oncologist. First, nowhere in Dr. Shaw's Affidavit or curriculum vitae does state that he  
4 is familiar with or has knowledge of the standard of care applicable to an oncologist. *See*  
5 *generally* Dr. Shaw's Affidavit and Curriculum Vitae, Ex. 1 to Pl.'s Compl. A review of those  
6 documents demonstrates that Dr. Shaw is not board-certified in oncology; he has no  
7 residency or fellowship training in oncology; he has no experience working as an  
8 oncologist; and does not hold himself out as an oncologist. *See generally id.* Nowhere has  
9 Dr. Shaw stated that he is an expert regarding the standard of care applicable to an  
10 oncologist; that the standard of care applicable to a specialist practicing internal medicine,  
11 critical care, and pulmonary diseases is the same as that applicable to an oncologist; that  
12 he has ever practiced oncology; or that the practice of internal medicine, critical care  
13 medicine, and pulmonary diseases medicine is the same or substantially similar to the  
14 practice of oncology. *See generally id.* Indeed, Dr. Shaw makes no mention of the standard  
15 of care applicable to an oncologist and he has provided no specific information regarding  
16 how he is qualified to render opinions about that specialty. *See generally id.*

17 All that Dr. Shaw has asserted is that "[m]y medical practice is substantially similar  
18 to the events encountered by Dr. Gollard in his interaction with Mr. Hidalgo. I diagnose and  
19 treat deep venous thromboses and pulmonary emboli on a frequent basis." *See* Dr. Shaw's  
20 Affidavit, Ex. 1 to Pl.'s Compl. at p. 1 (emphasis added); *see also* Pl.'s Opp'n at p. 7. Dr.  
21 Shaw's statement and choice of words is important. He merely states that his medical  
22 practice is substantially similar to the events that Dr. Gollard encountered; he does not  
23 state that his practice is substantially similar to Dr. Gollard's practice. If it were, he would  
24 have said so. The remaining portion of his statement is equally important. He alleges that  
25 he diagnoses and treats deep vein thromboses and pulmonary emboli on a frequent basis.  
26 He does not state that he treats cancer patients like Dr. Gollard. Instead, he emphasizes  
27 his specialization that is distinct from Dr. Gollard. Dr. Gollard treats cancer and was  
28 involved in the treatment of the decedent's cancer at the time of the alleged negligence.

1 Dr. Shaw, on the other hand, specializes in deep vein thromboses and pulmonary emboli,  
2 something that Dr. Gollard does not treat in his specialty.

3 The standard applicable to Dr. Gollard is not what a board-certified internal  
4 medicine, critical care, and pulmonary diseases specialist would have done, but what an  
5 oncologist - who treats cancer - would have done under the circumstances. In fact, because  
6 Dr. Shaw acknowledges that he “diagnose and treat deep venous thromboses and  
7 pulmonary emboli on a frequent basis[,]” and because he is a specialist regarding those  
8 conditions, he is examining Dr. Gollard’s conduct through eyes much more highly trained  
9 than those of Dr. Gollard, who does not have such specialization and practices in a  
10 completely different specialty. *See e.g. King v. Singing River Health Sys.*, 158 So. 3d 318,  
11 333 (Miss. Ct. App. 2014) (“The problem with [the neurologist]’s opinion concerning the  
12 standard of care is that he is examining the symptoms through eyes much more highly  
13 trained in regard to rare types of stroke than those of ER physicians and hospitalists.”).

14 Plaintiff’s attempt to hold Dr. Gollard to the standard of care applicable to a board-  
15 certified internal medicine, critical care, and pulmonary diseases specialist and who is  
16 unfamiliar with the standard of care applicable to oncologist is contrary to the Nevada  
17 Legislature’s intent to ensure that medical malpractice cases are filed in good faith, to  
18 ensure that Nevada physicians are judged by competent experts, and to strengthen the  
19 requirements for expert witnesses. *See Washoe*, 122 Nev. at 1304.

20 *2. Plaintiff is Precluded from Amended Her Complaint as a Matter of Law.*

21 Relying on dicta from *Borger* and without citing any evidence, Plaintiff argues that  
22 “[i]f this Court finds the Plaintiff’s expert’s affidavit is deficient, the trend in this District is to  
23 apply *Borger* and allow amendment.” *See* Pl.’s Opp’n at p. 8. Plaintiff’s unsupported request  
24 is contrary to binding Nevada law.

25 First, the language relied on by Plaintiff was nothing more than dicta, later criticized  
26 by the Nevada Supreme Court, and was implicitly overruled in *Washoe. Alemi v. Eighth*  
27 *Judicial Dist. Court of Nev.*, 132 Nev. 938, n. 3 (the Nevada Supreme Court made clear  
28 that “[w]e note that although dictum of *Borger v. Eighth Judicial District Court*, 120 Nev.

1 1021, 1029-30, 102 P.3d 600, 606 (2004) anticipates allowing amendments, our more  
2 recent decision in *Washoe Medical Center*, 122 Nev. at 1304, 148 P.3d at 794, is  
3 controlling.”) (citing *Vegas Franchises, Ltd. v. Culinary Workers Union, Local No. 226*, 83  
4 Nev. 422, 424, 433 P.2d 263 (1967) (“Seldom is stare decisis appropriately applied to  
5 dictum.”)). In other words, amendments under NRS 41A.071 are not permitted.

6 Indeed, in *Washoe*, the Nevada Supreme Court made clear that “a complaint filed  
7 without a supporting medical expert affidavit is void *ab initio* and must be dismissed[]” and  
8 “[b]ecause a void complaint does not legally exist, it cannot be amended.” 122 Nev. at 1301.  
9 In other words, submitting a medical affidavit is not enough; it must be supportive as  
10 specified in NRS 41A.071. “[N]on compliance with NRS 41A.071’s affidavit requirement  
11 renders a complaint void *ab initio*, we agree with those courts that amendment is not  
12 permitted and dismissal is required.” *Id.* at 1305 (citations omitted).

13 In *Szydel v. Markman*, the Nevada Supreme Court explained that “NRS 41A.071  
14 requires the dismissal of a medical malpractice action filed without an affidavit from a  
15 medical professional practicing in a substantially similar field.” 121 Nev. 453, 458, 117 P.3d  
16 200 (2005). Again, an affidavit from a medical professional is not sufficient; it must be from  
17 one practicing in a substantially similar field. If not, the action must be dismissed. In  
18 *Symborski v. Spring Mr. Treatment Ctr.*, the Nevada Supreme Court explained that “the  
19 medical malpractice claims that fail to comply with NRS 41A.071 must be severed and  
20 dismissed[.]” 133 Nev. 638, 643, 403 P.3d 1280 (2017). In other words, an affidavit that  
21 that does not comply with all portions of NRS 41A.071’s requirements must be dismissed.

22 Second, NRS 41A.071 is clear on its face. Each of the four expert requirements  
23 thereunder are mandatory and dismissal is required unless each of the four requirements  
24 have been met. NRS 41A.071 states:

25 If an action for professional negligence is filed in the district court, the district court shall  
26 dismiss the action, without prejudice, if the action is filed without an affidavit that:

- 27 1. Supports the allegations contained in the action;  
28 2. Is submitted by a medical expert who practices or has practices in an area that is  
substantially similar to the type of practice engaged in at the time of the alleged professional

negligence;

3. Identifies by name, or describes by conduct, each provider of health care who is alleged to be negligence; and

4. Sets forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, and concise terms.

NRS 41A.071(1)-(4) (emphases added). The Nevada Supreme Court has explained that “[w]hen a statute is clear on its face, we will not look beyond the statute’s plain language.” *Washoe*, 122 Nev. at 1302 (citation omitted). Accordingly, Plaintiff’s argument fails.

Third, contrary to Plaintiff’s bald claim that the trend in Nevada is to allow amendments, Nevada courts have concluded the opposite. For example, in *Soong v. Eighth Judicial Dist. Court of Nev.*, the Nevada Supreme Court addressed whether the fourth element of NRS 41A.071 had been satisfied, i.e., whether the plaintiff’s proposed expert declarations “[s]et forth factually a specific act or acts of alleged negligence separately as to each defendant[.]” No. 82472, 2021 Nev. Unpub. LEXIS 541, \*2 (Nev. 8th Jud. Dist. July 12, 2021) (unpublished disposition). Because the expert declarations did not satisfy that requirement, the Nevada Supreme Court made clear that the “district court had an obligation under the strict language of NRS 41A.071 to dismiss the action against Dr. Soong, and it erred when it failed to do so.” *Id.* at \*3 (citations omitted). It cited *Washoe*, and emphasized that “NRS 41A.071’s language providing ‘that a complaint filed without an expert affidavit shall be dismissed’ leaves ‘no discretion’ and such a complaint ‘must be automatically dismissed’ when the statute is not satisfied[.]” *Id.* (citing *Washoe*, 122 Nev. at 1303). Because the declarations were defective, it instructed the District Court to grant Dr. Soong’s motion to dismiss the plaintiff’s complaint. *Id.* at \*3-\*4 (“ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to grant Dr. Soong’s motion to dismiss due to the defective declarations.”).

In *Salcedo v. Eighth Judicial Dist. Court of Nev.*, the Nevada Supreme Court determined that the plaintiff’s proposed medical expert affidavit was defective and therefore, “the district court had an obligation under the strict language of NRS 41A.071,

1 which requires a medical affidavit to include support for allegations against the named  
2 defendant doctors, to dismiss the action, and it manifestly abused its discretion when it  
3 failed to do so.” No. 55751, 2011 Nev. Unpub. LEXIS 825, \*6-\*7 (Nev. Apr. 28, 2011)  
4 (unpublished disposition). It therefore ordered the district court to grant the defendant  
5 physician’s motion to dismiss the plaintiff’s complaint.

6 Accordingly, Plaintiff’s unsupported claims must be rejected. Plaintiff should be  
7 precluded from amending her defective Complaint.

8 **B. Plaintiff’s Claim for Punitive Damages Must be Denied.**

9 Without citing to any authority, Plaintiff baldly claims that “Dr. Gollard<sup>1</sup> [sic] very  
10 clearly alleges facts giving rise to a prayer for punitive damages[,]” and then simply restates  
11 paragraph 23 of her Complaint, which is based on Dr. Shaw’s Affidavit. *See* Pl.’s Opp’n at  
12 pp. 9-10 (citing to Exhibit A thereto). Specifically, Plaintiff alleges that the claims that Dr.  
13 Gollard allegedly failed to “properly examine” the decedent; failed “to make accurate  
14 medical records,” failed “to note marked asymmetry” in the decedent’s lower extremities;  
15 failed “to reach out to and discuss” the decedent’s “complaints and physical presentation  
16 with his surgeon[;]” failed “to refer” the decedent to the ED; and failed “to appreciate and  
17 work up the risk of DVT amounted to a wanton and reckless disregard for the well being of  
18 [the decedent] as to constitute malice, gross negligence and oppression.” *See* Pl.’s Opp’n  
19 at pp. 9-10. No matter how Plaintiff characterizes her claims, they cannot support a claim  
20 for punitive damages.

21 Even accepting Plaintiffs’ allegations as true (which they are not), they are  
22 insufficient to warrant punitive damages. *See* NRS 42.005(1) (requiring clear and  
23 convincing evidence of “oppression, fraud or malice, express or implied” for the imposition  
24 of punitive damages). Merely alleging negligence is not sufficient to implicate punitive  
25 damages. *See e.g. Maduiké v. Agency Rent-A-Car*, 114 Nev. 1, 3, 953 P.2d 24 (1998).

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27 <sup>1</sup> Dr. Gollard believes that this was a typographical error; however, to the extent that it was not, Dr. Gollard  
28 vigorously denies such a claim.

1 “[E]ven unconscionable irresponsibility will not support a punitive damages award.” *Id.* at  
2 5. Each of Plaintiff’s claims regarding Dr. Gollard’s care are nothing more than claims of  
3 medical negligence. Indeed, Dr. Shaw, upon which Plaintiff relies for her claims,  
4 characterizes the alleged deficient care as nothing more than breaches of the standard of  
5 care. Specifically, he opined:

6 13. Dr. Russell Gollard breached the standard of care by failing to properly  
7 examine Mr. Hidalgo at the time of the clinic visit on 10/14/20. The patient’s  
8 widow describes little if any examination of the extremities. The documented  
physical examination confirms this suspicion, as several physical exam

9 14. The standard of care for Dr. Gollard required that he perform a thorough  
10 physical examination. Had he done this, he would have noticed marked  
asymmetry in the size of Mr. Hidalgo’s lower extremities.

11 15. The standard of care with a [sic] required a discussion with the patient’s  
12 surgeon regarding these findings, as well as a referral to the emergency  
13 department for venography to evaluate the deep veins of the pelvis and  
inferior vena cava.

14 16. Given Dr. Gollard’s expertise as an oncologist and hematologist, he  
15 should have been aware that Mr. Hidalgo was at increased risk for deep  
venous thromboses given his diagnosis of cancer and his recent surgery.

16 17. By failing to practice within the standard of care, these breaches of Dr.  
17 Gollard directly lead to the pain, suffering, and death of Mr. Hidalgo who  
suffered a catastrophic saddle pulmonary embolism.

18 *See* Dr. Shaw’s Affidavit and Curriculum Vitae, Ex. 1 to Pl.’s Compl., ¶¶ 13-17 (emphasis  
19 added). In other words, each of Dr. Gollard’s alleged deficiencies are nothing more than  
20 negligence as characterized by Dr. Shaw. Dr. Shaw did not identify any of the necessary  
21 “deliberate” or “egregious” conduct required for punitive damages. Likewise, Plaintiff has  
22 not provided any support for the notion that such alleged negligent care can support a claim  
23 for punitive damages. Accordingly, Plaintiff’s claim for punitive damages must be  
24 dismissed.

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1 **II. CONCLUSION**

2 Based on Defendant's initial Motion to Dismiss and the foregoing, Defendant  
3 respectfully requests that Plaintiff's Complaint and her claim for punitive damages be  
4 dismissed and that she be precluded from amending her Complaint.

5 DATED this 26th day of January, 2022

6  
7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8  
9 By /s/ Xiao Wen Jin

10 KEITH A. WEAVER

11 Nevada Bar No. 10271

XIAO WEN JIN

12 Nevada Bar No. 13901

6385 S. Rainbow Boulevard, Suite 600

13 Las Vegas, Nevada 89118

*Attorneys for Defendant Russell Gollard, M.D.*

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 26th day of January, 2022, a true and correct copy of  
3 REPLY IN SUPPORT OF DEFENDANT RUSSELL GOLLARD, M.D.'S MOTION TO  
4 DISMISS was served electronically with the Clerk of the Court using the Odyssey E-File &  
5 Serve system and serving all parties with an email-address on record, who have agreed to  
6 receive electronic service in this action.

7 AIMEE CLARK NEWBERRY, ESQ.  
Nevada Bar No. 11084  
8 **CLARK NEWBERRY LAW FIRM**  
410 S. Rampart Blvd., Suite #390  
9 Las Vegas, Nevada 89145  
10 T: (702) 608-4232  
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11 Email: aclarknewberry@cnlawlv.com

12 By /s/ Emma L. Gonzales  
13 An Employee of  
14 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Malpractice - Medical/Dental**

**COURT MINUTES**

**January 31, 2022**

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A-21-842279-C      Stephanie Hidalgo, Plaintiff(s)  
vs.  
Russell Gollard, M.D., Defendant(s)

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**January 31, 2022      3:00 AM      Minute Order**

**HEARD BY:** Johnson, Eric      **COURTROOM:** Chambers

**COURT CLERK:** Kathryn Hansen-McDowell

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Defendant Russell Gollard, M.D. filed a Motion to Dismiss on December 29, 2021. The matter was subsequently scheduled for hearing on February 02, 2020.

After considering the pleadings and argument of counsel, the Court DENIES Defendants' Motion to Dismiss. The Court finds Plaintiff's expert affidavit is sufficient to meet the requirements of NRS 41A.071(2). The Court also denies Defendants' request to dismiss Plaintiff's punitive damages. The Court finds Plaintiff's prayer for damages is adequately pled under NRCP 12(b)(5) and dismissal is not appropriate at this stage.

The Court hereby VACATES the February 02, 2022 hearing. Counsel for Plaintiff is directed to prepare a proposed order and to circulate it to opposing counsel for approval as to form and content before submitting it to chambers for signature. Counsel is directed to email a word and pdf copy of the proposed order to dc20inbox@clarkcountycourts.us.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. 1/31/22 khm

PRINT DATE: 01/31/2022

Page 1 of 2

Minutes Date: January 31, 2022



**ORDR**

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*Attorney for Plaintiffs*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

STEPHANIE V. HIDALGO, individually and )  
as Special Administrator of the ESTATE OF )  
RENE HIDALGO, )

Plaintiffs, )

vs. )

RUSSELL GOLLARD, M.D.; DOES I )  
through X; and ROE CORPORATIONS I )  
through X, inclusive, )

Defendants. )  
\_\_\_\_\_ )

CASE NO.: A-21-842279-C

DEPT. NO.: XX

**ORDER DENYING DEFENDANT  
RUSSELL GOLLARD, M.D.'S  
MOTION TO DISMISS**

On January 31, 2022, this Court issued a minute order, ruling on defendant, Russell Gollard, M.D.'s ("Defendant") Motion to Dismiss Plaintiff's complaint and prayer for punitive damages. The Court having reviewed and considered the moving papers, the papers and pleadings on file herein, good cause appearing, the Court makes the following findings:

1. Plaintiff's expert affidavit is sufficient to meet the requirements of NRS 41(A).071(2).
2. Plaintiff's prayer for punitive damages is adequately pled under NRCP 12(b)(5) and dismissal is not appropriate at this time.

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Accordingly, the Court enters the following order:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant Russell Gollard M.D.'s Motion to Dismiss is hereby **DENIED**.

Dated this 7th day of February, 2022

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

Submitted by:

**06A 378 6208 9023**  
**Eric Johnson**  
**District Court Judge**

CLARK NEWBERRY LAW FIRM

/s/ Aimee Clark Newberry

Aimee Clark Newberry, Esq.  
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Las Vegas, NV 89145  
*Attorney for Plaintiff*

Approved as to form and content by:

LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ Xiao Wen Jin

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Las Vegas, Nevada 89118  
*Attorneys for Defendant*

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Stephanie Hidalgo, Plaintiff(s) | CASE NO: A-21-842279-C  
7 vs. | DEPT. NO. Department 20  
8 Russell Gollard, M.D.,  
9 Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Denying Motion was served via the court's electronic eFile  
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/7/2022

15 Emma Gonzales	emma.gonzales@lewisbrisbois.com
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